

regulation in final without change, with additional direction and clarification provided by this preamble.

List of Subjects in 12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, part 618 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 618—GENERAL PROVISIONS

1. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2126, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

Subpart G—Releasing Information

2. Section 618.8320 is amended by redesignating paragraph (b)(10) as new paragraph (b)(10)(i) and by adding a new paragraph (b)(10)(ii) to read as follows:

§ 618.8320 Data regarding borrowers and loan applicants.

(b) * * *

(10)(i) * * *

(ii) Information concerning borrowers contained in an appraisal report may be given by a Farm Credit institution to any State agency certifying and licensing real estate appraisers provided that the Farm Credit institution:

(A) Certifies that the information is required in connection with an employee's application for certification and licensure and that the institution has taken appropriate steps to protect the confidentiality of any borrower information that is not essential to the State's evaluation of the application; and

(B) Determines that the State certification and licensing program makes reasonable provisions for protecting the confidentiality of the borrower information contained in the appraisal report.

* * *

Dated: September 28, 1993.

Curtis M. Anderson,
Secretary, Farm Credit Administration Board.
[FR Doc. 93-24469 Filed 10-5-93; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 90F-0225]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dimethylamine-epichlorohydrin copolymer as a sizing agent in the manufacture of paper and paperboard products intended for use in contact with food. This action responds to a food additive petition filed by Albright and Wilson Americas.

DATES: Effective-October 6, 1993; written objections and requests for a hearing by November 5, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 30, 1990 (55 FR 30983), FDA announced that a food additive petition (FAP 0B4215) had been filed by Albright and Wilson Americas, c/o Delta Analytical Corp., 7910 Woodmont Ave., suite 1000, Bethesda, MD 20814 (former address 1414 Fenwick Lane, Silver Spring, MD 20910), proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of dimethylamine-epichlorohydrin copolymer as a sizing agent in the manufacture of paper and paperboard intended for use in contact with food.

In its evaluation of the safety of the petitioned additive, FDA has reviewed the safety of the additive itself and the starting materials used to manufacture the additive. Although the additive (dimethylamine-epichlorohydrin copolymer) itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted epichlorohydrin, a carcinogenic reactant used in the manufacture of the additive. Residual amounts of reactants and

manufacturing aids, such as epichlorohydrin, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of the additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance" (H. Rept. 2284, 85th Cong., 2d sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer, or Delaney, clause of the act (section 409(c)(3)(A)) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole has not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the Federal Register of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that has not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of the Petitioned Use

FDA estimates that the petitioned use of the additive dimethylamine-epichlorohydrin copolymer will result in levels of exposure to the additive of no greater than 85 parts per billion in the daily diet. FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here.

A. The Impurity, Epichlorohydrin

Because dimethylamine-epichlorohydrin copolymer, which contains epichlorohydrin, has not been shown to cause cancer, the anticancer provision does not apply. However, FDA has further evaluated the safety of the additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime risk presented by the carcinogenic chemical, epichlorohydrin, that may be present as an impurity in the additive.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see 49 FR 13018 at 13019, April 2, 1984). The risk evaluation of the carcinogenic impurity, epichlorohydrin, has two aspects: (1) Assessment of the exposure to the impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

Based on the fraction of the daily diet that may be in contact with paper food-contact surfaces containing dimethylamine-epichlorohydrin copolymer and on the level of epichlorohydrin that may be present in the additive, FDA estimated the worst-case exposure to epichlorohydrin from the petitioned use of the additive in the

manufacture of paper and paperboard contacting aqueous and fatty foods to be 1.6 micrograms per person per day ($\mu\text{g}/\text{person}/\text{day}$) (Ref. 3). The agency used data from a Japanese carcinogenesis bioassay (Ref. 4) on epichlorohydrin fed to rats via their drinking water to estimate the upper-bound limit of lifetime human risk from exposure to this chemical stemming from the proposed use of the additive. The results of the bioassay demonstrated that epichlorohydrin was carcinogenic under the conditions of the study. The test material caused significantly increased incidences of stomach papillomas and carcinomas in the rats.

The Center for Food Safety and Applied Nutrition reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on epichlorohydrin. The center further concluded that an estimate of the upper-bound lifetime human risk from potential exposure to epichlorohydrin resulting from the proposed use of the additive could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the study with rats to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions of use of the food additive.

Based on a worst-case exposure of 1.6 $\mu\text{g}/\text{person}/\text{day}$, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to epichlorohydrin resulting from the use of dimethylamine-epichlorohydrin copolymer is 7.2×10^{-8} , or 7.2 in 100 million (Ref. 5). Because of the numerous conservatism in the exposure estimate, actual lifetime averaged individual daily exposure to epichlorohydrin is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to epichlorohydrin that might result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of epichlorohydrin in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low level at which epichlorohydrin may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels; and (2) the upper-bound limit of lifetime risk from exposure to this impurity, even under worst-case assumptions, is very low, less than 7.2 in 100 million.

III. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of the additive in paper and paperboard products in contact with aqueous and fatty foods is safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect. Therefore, § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 5, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each

numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogen Testing Programs," in "Food Safety: Where are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.
2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in "Chemical Safety Regulation and Compliance," edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24-33, 1985.
3. Memorandum from the Food and Color Additive Review Section (HFF-415) to the Indirect Additives Branch (HFF-335), concerning FAP 0B4215—Albright and Wilson Americas—exposure to the additive and its components, October 10, 1990.
4. Konishi, Y. et al., "Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wistar Rats," *Gann* 71: 922-923, 1980.
5. Memorandum from Quantitative Risk Assessment Committee, Center for Food Safety and Applied Nutrition, concerning epichlorohydrin, FAP 0B4215, June 6, 1991.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 is revised to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 CFR U.S.C. 321, 342, 346, 348, 379(e)).

2. Section 176.170 is amended in the table in paragraph (a)(5) by revising the entry for "Dimethylamine-epichlorohydrin copolymer * * *" under the heading "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

(a)	*	*	*	*	*
(5)	*	*	*	*	*

List of Substances

Limitations

Dimethylamine-epichlorohydrin copolymer in which not more than 5 mole-percent of dimethylamine may be replaced by an equimolar amount of ethylenediamine and in which the ratio of total amine to epichlorohydrin does not exceed 1:1. The nitrogen content of the copolymer shall be 9.4 to 10.8 weight percent on a dry basis and a 10 percent by weight aqueous solution of the final product has a minimum viscosity of 5.0 centipoises at 25°C, as determined by LVT-series Brookfield viscometer using a No.1 spindle at 60 r.p.m. (or by other equivalent method)..

For use only:

1. As a retention aid employed before the sheet-forming operation in the manufacture of paper and paperboard and limited to use at a level not to exceed 1 percent by weight of the finished paper and paperboard.
2. At the size press at a level not to exceed 0.017 percent by weight of the finished paper and paperboard.

* * * * *
Dated: September 30, 1993.
Michael R. Taylor,
Deputy Commissioner for Policy.
[FR Doc. 93-24473 Filed 10-5-93; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 80

Provision of Early Intervention Services to Eligible Infants and Toddlers With Disabilities and Their Families, and Special Education and Related Services to Children With Disabilities Within the Section 6 School Arrangements

AGENCY: Office of the Secretary, DoD.
ACTION: Interim final rule.

SUMMARY: This interim final rule provides guidance implementing the Individuals with Disabilities Education Act (IDEA), as amended, in the Section 6 Schools and for eligible infants and toddlers in the United States.

DATES: This part is effective October 6, 1993. Written comments on this interim final rule must be received by November 5, 1993.

ADDRESSES: Forward comments to the Office of Section 6 Schools, Crystal Gateway #2, suite 1500, 1225 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Hector O. Nevarez, Director, Section 6 Schools, on (703) 746-7875/7874.

SUPPLEMENTARY INFORMATION: It has been determined that this interim final rule complies with: (1) Executive Order 12291, "Federal Regulation" because the interim final rule does not:

- (a) Have an annual effect on the economy of \$100 million or more.
- (b) Cause a major increase in costs or prices for consumers, individual

industries, Federal, State, or local government agencies, or geographic regions; or

(c) Have a significant adverse effect on competition, employment, investment, productivity, or innovation;

(2) Public Law 96-354, "Regulatory Flexibility Act," does not apply because the interim final rule does not have a significant economic impact on a substantial number of small entities. The primary effect of this interim final rule will be a reduction in administrative costs and other burdens resulting from the simplification and clarification of policies.

(3) Public Law 96-511, "Paperwork Reduction Act," does not apply because the interim final rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

This interim final rule is issued to provide guidance, required by statute, with respect to (1) the implementation of the IDEA, as amended, in the DoD Section 6 Schools and (2) the provision of early intervention services to infants and toddlers who, but for their age, would be entitled to enroll in such Section 6 Schools. This interim final rule is intended to provide that guidance as soon as possible in school year 1993-94. The DoD invites public comments on this interim final rule. It shall consider those comments in deciding whether, and, if so, how, to amend this interim final rule.

List of Subjects in 32 CFR Part 80

Education of individuals with disabilities, Individuals with disabilities, Infants and children.

Accordingly, title 32, chapter I, subchapter C, is amended to add part 80 to read as follows:

PART 80—PROVISION OF EARLY INTERVENTION SERVICES TO ELIGIBLE INFANTS AND TODDLERS WITH DISABILITIES AND THEIR FAMILIES, AND SPECIAL EDUCATION AND RELATED SERVICES TO CHILDREN WITH DISABILITIES WITHIN THE SECTION 6 SCHOOL ARRANGEMENTS

Sec.

- 80.1 Purpose.
- 80.2 Applicability and scope.
- 80.3 Definitions.
- 80.4 Policy.
- 80.5 Responsibilities.
- 80.6 Procedures.

Appendix A to Part 80—Procedures for the Provision of Early Intervention Services for Infants and Toddlers With Disabilities, Ages 0-2 (inclusive), and Their Families

Appendix B to Part 80—Procedures for Special Education Programs (Including Related Services) and for Preschool Children and Children With Disabilities (3-21 years inclusive)

Appendix C to Part 80—Hearing Procedures

Authority: 20 U.S.C. 1400 *et seq.*; 20 U.S.C. 241; 20 U.S.C. 241 note.

§ 80.1 Purpose.

This part:

(a) Establishes policies and procedures for the provision of early intervention services to infants and toddlers with disabilities (birth to age 2 inclusive) and their families, and special education and related services to children with disabilities (ages 3-21 inclusive) entitled to receive special educational instruction or early intervention services from the Department of Defense under Pub. L. 81-874, sec. 6, as amended; Pub. L. 97-35, sec. 505(c); the Individuals with Disabilities Education Act, Pub. L. 101-476, as amended; Pub. L. 102-119, sec. 23; and consistent with 32 CFR parts 285 and 310, and the Federal Rules of Civil Procedure (28 U.S.C.).

(b) Establishes policy, assigns responsibilities, and prescribes procedures for:

(1) Implementation of a comprehensive, multidisciplinary program of early intervention services for infants and toddlers ages birth through 2 years (inclusive) with disabilities and their families.

(2) Provision of a free, appropriate education including special education and related services for preschool children with disabilities and children with disabilities enrolled in the Department of Defense Section 6 School Arrangements.

(c) Establishes a Domestic Advisory Panel (DAP) on Early Intervention and Education for Infants, Toddlers, Preschool Children and Children with Disabilities, and a DoD Coordinating Committee on Domestic Early Intervention, Special Education and Related Services.

(d) Authorizes the publication of DoD Regulations and Manuals, consistent with DoD 5025.1-M¹, and DoD forms consistent with DoD 5000.12-M² and DoD Directives 8910.1³ to implement this part.

¹ Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

² See footnote 1 to § 80.1 (c).

³ See footnote 1 to § 80.1 (c).

§ 80.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Agencies (hereafter referred to collectively as "the DoD Components").

(b) Encompasses infants, toddlers, preschool children, and children receiving or entitled to receive early intervention services or special educational instruction from the DoD on installations with Section 6 School Arrangements, and the parents of those individuals with disabilities.

(c) Applies only to schools operated by the Department of Defense within the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

§ 80.3 Definitions.

(a) *Assistive technology device.* Any item, piece of equipment, or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(b) *Assistive technology service.* Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. This term includes:

(1) Evaluating the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment.

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities.

(3) Selecting designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices.

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitative plans and programs.

(5) Training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities.

(6) Training or technical assistance for professionals (including individuals providing educational rehabilitative services), employers, or other

individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of an individual with a disability.

(c) *Attention deficit disorder (ADD)*. As used to define students, encompasses attention-deficit hyperactivity disorder and attention deficit disorder without hyperactivity. The essential features of this disorder are developmentally inappropriate degrees of inattention, impulsiveness, and hyperactivity.

(1) A diagnosis of ADD may be made only after the child is evaluated by appropriate medical personnel, and evaluation procedures set forth in this part (appendix B to this part) are followed.

(2) A diagnosis of ADD, in and of itself, does not mean that a child requires special education; it is possible that a child diagnosed with ADD, as the only finding, can have his or her educational needs met within the regular education setting.

(3) For a child with ADD to be eligible for special education, the Case Study Committee, with assistance from the medical personnel conducting the evaluation, must then make a determination that the ADD is a chronic or acute health problem that results in limited alertness, which adversely affects educational performance. Children with ADD who are eligible for special education and medically related services will qualify for services under "Other Health Impaired" as described in Criterion A, paragraph (g) (1) of this section.

(d) *Autism*. A developmental disability significantly affecting verbal and non-verbal communication and social interaction generally evident before age 3 that adversely affects educational performance. Characteristics of autism include irregularities and impairments in communication, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not include children with characteristics of the disability of serious emotional disturbance.

(e) *Case Study Committee (CSC)*. A school-based committee that determines a child's eligibility for special education, develops and reviews a child's individualized education program (IEP), and determines appropriate placement in the least restrictive environment. A CSC is uniquely composed for each child. Participants on a CSC must include:

(1) The designated representative of the Section 6 School Arrangement, who is qualified to supervise the provision of special education. Such representative may not be the child's special education teacher.

(2) One, or more, of the child's regular education teachers, if appropriate.

(3) A special education teacher.

(4) One, or both, of the child's parents.

(5) The child, if appropriate.

(6) A member of the evaluation team or another person knowledgeable about the evaluation procedures used with the child.

(7) Other individuals, at the discretion of the parent or the Section 6 School Arrangement, who may have pertinent information.

(f) *Child-find*. The ongoing process used by the Military Services and a Section 6 School Arrangement to seek and identify children (from birth to 21 years of age) who show indications that they might be in need of early intervention services or special education and related services. Child-find activities include the dissemination of information to the public and identification, screening, and referral procedures.

(g) *Children with disabilities ages 5-21 (inclusive)*. Those children ages 5-21 years (inclusive), evaluated in accordance with this part, who are in need of special education as determined by a CSC and who have not been graduated from a high school or who have not completed the requirements for a General Education Diploma. The terms "child" and "student" may also be used to refer to this population. The student must be determined eligible under one of the following four categories:

(1) *Criterion A*. The educational performance of the student is adversely affected, as determined by the CSC, by a physical impairment; visual impairment including blindness; hearing impairment including deafness; orthopedic impairment; or other health impairment, including ADD, when the condition is a chronic or acute health problem that results in limited alertness; autism; and traumatic brain injury requiring environmental and/or academic modifications.

(2) *Criterion B*. A student who manifests a psychoemotional condition that is the primary cause of educational difficulties; a student who exhibits maladaptive behavior to a marked degree and over a long period of time that interferes with skill attainment, classroom functioning or performance, social-emotional condition, and who as a result requires special education. The term does not usually include a student

whose difficulties are primarily the result of:

- (i) Intellectual deficit;
- (ii) Sensory or physical impairment;
- (iii) Attention deficit hyperactivity disorder;
- (iv) Antisocial behavior;
- (v) Parent-child or family problems;
- (vi) Disruptive behavior disorders;
- (vii) Adjustment disorders;
- (viii) Interpersonal or life circumstance problems; or
- (ix) Other problems that are not the result of a severe emotional disorder.

(3) *Criterion C*. The educational performance of the student is adversely affected, as determined by the CSC, by a speech and/or language impairment.

(4) *Criterion D*. The measured academic achievement of the student in math, reading, or language is determined by the CSC to be adversely affected by underlying disabilities (including mental retardation and specific learning disability), including either an intellectual deficit or an information processing deficit.

(h) *Consent*. This term means that:

(1) The parent of an infant, toddler, child, or preschool child with a disability has been fully informed, in his or her native language, or in another mode of communication, of all information relevant to the activity for which permission is sought.

(2) The parent understands and agrees in writing to the implementation of the activity for which his or her permission is sought. The writing must describe that activity, list the child's records that will be released and to whom, and acknowledge that the parent understands consent is voluntary and may be prospectively revoked at any time.

(3) The parent of an infant, toddler, preschool child or child must consent to the release of records. The request for permission must describe that activity, list each individual's records that will be released and to whom, and acknowledge that the parent understands that consent is voluntary and may be prospectively revoked at any time.

(4) The written consent of a parent of an infant or toddler with a disability is necessary for implementation of early intervention services described in the individualized family service plan (IFSP). If such parent does not provide consent with respect to a particular early intervention service, then the early intervention services for which consent is obtained shall be provided.

(i) *Deaf*. A hearing loss or deficit so severe that the child is impaired in processing linguistic information through hearing, with or without

amplification, to the extent that his or her educational performance is adversely affected.

(j) *Deaf-blind.* Concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(k) *Developmental delay.* A significant discrepancy in the actual functioning of an infant or toddler when compared with the functioning of a nondisabled infant or toddler of the same chronological age in any of the following areas of development: Physical development, cognitive development, communication development, social and emotional development, and adaptive development as measured using standardized evaluation instruments and confirmed by clinical observation and judgment. A significant discrepancy exists when the one area of development is delayed by 25 percent or 2 standard deviations or more below the mean or when two areas of development are each delayed by 20 percent of 1½ standard deviations or more below the mean. (Chronological age should be corrected for prematurity.)

(l) *Early intervention program coordination services.* Case management services that include integration and oversight of the scheduling and accomplishment of evaluation and delivery of early intervention services to an infant or toddler with a disability and his or her family.

(m) *Early intervention services.* Developmental services that:

(1) Are provided under the supervision of a military medical department.

(2) Are provided using Military Health Service System resources at no cost to the infant or toddler's parents (but incidental fees (e.g., child care fees) that are normally charged to infants, toddlers, and children without disabilities or their parents may be charged).

(3) Are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development.

(4) Meet the standards developed by the Assistant Secretary of Defense for Health Affairs (ASD(HA)).

(5) Include the following services: Family training, counseling, and home

visits; special instruction; speech pathology and audiology; occupational therapy; physical therapy; psychological services; early intervention program coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; vision services; and social work services. Also included are assistive technology devices and assistive technology services; health services necessary to enable the infant or toddler to benefit from the above early intervention services; and transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive early intervention services.

(6) Are provided by qualified personnel, including: Special educators; speech and language pathologists and audiologists; occupational therapists; physical therapists; psychologists; social workers; nurses; nutritionists; family therapists; orientation and mobility specialists; and pediatricians and other physicians.

(7) To the maximum extent appropriate, are provided in natural environments, including the home and community settings in which infants and toddlers without disabilities participate.

(8) Are provided in conformity with an IFSP.

(n) *Evaluation.* Procedures used to determine whether an individual (birth through 21 inclusive) has a disability under this part and the nature and extent of the early intervention services and special education and related services that the individual needs.

These procedures must be used selectively with an individual and may not include basic tests administered to, or used with, all infants, toddlers, preschool children or children in a school, grade, class, program, or other grouping.

(o) *Family training, counseling, and home visits.* Services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler eligible for early intervention services in understanding the special needs of the child and enhancing the infant or toddler's development.

(p) *Free appropriate public education.* Special education and related services for children ages 3–21 years (inclusive) that:

(1) Are provided at no cost (except as provided in paragraph (vv)(1) of this section) to parents or child with a disability and are under the general

supervision and direction of a Section 6 School Arrangement.

(2) Are provided at an appropriate preschool, elementary, or secondary school.

(3) Are provided in conformity with an Individualized Education Program.

(4) Meet the requirements of this part.

(q) *Frequency and intensity.* The number of days or sessions that a service will be provided, the length of time that the service is provided during each session, whether the service is provided during each session, and whether the service is provided on an individual or group basis.

(r) *Health services.* Services necessary to enable an infant or toddler, to benefit from the other early intervention services under this part during the time that the infant or toddler is receiving the other early intervention services. The term includes:

(1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or osteotomy collection bags, and other health services.

(2) Consultation by physicians with other service providers on the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.

(3) The term does not include the following:

(i) Services that are surgical in nature or purely medical in nature.

(ii) Devices necessary to control or treat a medical condition.

(iii) Medical or health services that are routinely recommended for all infants or toddlers.

(s) *Hearing impairment.* A hearing loss, whether permanent or fluctuating, that adversely affects an infant's, toddler's, preschool child's, or child's educational performance.

(t) *High probability for development delay.* An infant or toddler with a medical condition that places him or her at substantial risk of evidencing a developmental delay before the age of 5 years without the benefit of early intervention services.

(u) *Include; such as.* Not all the possible items are covered, whether like or unlike the ones named.

(v) *Independent evaluation.* An evaluation conducted by a qualified examiner who is not employed by the DoD Section 6 Schools.

(w) *Individualized education program (IEP).* A written statement for a preschool child or child with a disability (ages 3–21 years inclusive) developed and implemented in accordance with this part (Appendix B to this part).

(x) *Individualized family service plan (IFSP)*. A written statement for an infant or toddler with a disability and his or her family that is a multidisciplinary assessment of the unique needs of the infant or toddler and concerns and the priorities of the family, and an identification of the services appropriate to meet such needs, concerns, and priorities.

(y) *Individuals with disabilities*. Infants and toddlers with disabilities, preschool children with disabilities, and children with disabilities ages birth to 21 years (inclusive) who are either entitled to enroll in a Section 6 School Arrangement or would, but for their age, be so entitled.

(z) *Infants and toddlers with disabilities*. Individuals from birth to age 2 years (inclusive), who need early intervention services because they:

(1) Are experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, of 25 percent (or 2 standard deviations below the mean), in one or more areas, or 20 percent (or 1½ standard deviations below the mean), in two or more of the following areas of development: cognitive, physical, communication, social or emotional, or adaptive development.

(2) Are at-risk for a developmental delay; i.e., have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; e.g., chromosomal disorders and genetic syndromes.

(aa) *Intercomponent*. Cooperation among the DoD Components and programs so that coordination and integration of services to individuals with disabilities and their families occur.

(bb) *Medically related services*. (1) Medical services (as defined in paragraph (bb) of this section) and those services provided under professional medical supervision that are required by a CSC either to determine a student's eligibility for special education or, if the student is eligible, the special education and related services required by the student under this part in accordance with 32 CFR part 345.

(2) Provision of either direct or indirect services listed on an IEP as necessary for the student to benefit from the educational curriculum. These services may include: Medical; social work; community health nursing; dietary; psychiatric diagnosis; evaluation, and follow up; occupational therapy; physical therapy; audiology; ophthalmology; and psychological testing and therapy.

(cc) *Medical services*. Those evaluative, diagnostic, therapeutic, and

supervisory services provided by a licensed and credentialed physician to assist CSCs and to implement IEPs. Medical services include diagnosis, evaluation, and medical supervision of related services that by statute, regulation, or professional tradition are the responsibility of a licensed and credentialed physician.

(dd) *Mental retardation*. Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a preschool child's or child's educational performance.

(ee) *Multidisciplinary*. The involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities, and development of an IFSP or IEP.

(ff) *Native language*. When used with reference to an individual of limited English proficiency, the language normally used by such individuals, or in the case of an infant, toddler, preschool child or child, the language normally used by the parent of the infant, toddler, preschool child or child.

(gg) *Natural environments*. Settings that are natural or normal for the infant or toddler's same age peers who have no disability.

(hh) *Non-section 6 school arrangement or facility*. A public or private school or other institution not operated in accordance with 32 CFR part 345. This term includes section 6 special contractual arrangements.

(ii) *Nutrition services*. These services include:

(1) Conducting individual assessments in nutritional history and dietary intake; anthropometric, biochemical and clinical variables; feeding skills and feeding problems; and food habits and food preferences.

(2) Developing and monitoring appropriate plans to address the nutritional needs of infants and toddlers eligible for early intervention services.

(3) Making referrals to appropriate community resources to carry out nutrition goals.

(jj) *Orthopedic impairment*. A severe physical impairment that adversely affects a child's educational performance. The term includes congenital impairments (such as club foot and absence of some member), impairments caused by disease (such as poliomyelitis and bone tuberculosis), and impairments from other causes such as cerebral palsy, amputations, and fractures or burns causing contracture.

(kk) *Other health impairment*. Having an autistic condition that is manifested by severe communication and other developmental and educational problems; or having limited strength, vitality, or alertness due to chronic or acute health problems that adversely affect a child's educational performance as determined by the CSC, such as: ADD, heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, and diabetes.

(ll) *Parent*. The biological father or mother of a child; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, provided that such person stands in loco parentis to that child and contributes at least one-half of the child's support.

(mm) *Personally identifiable information*. Information that includes the name of the infant, toddler, preschool child, child, parent or other family member; the home address of the infant, toddler, preschool child, child, parent or other family member; another personal identifier, such as the infant's, toddler's, preschool child's, child's, parent's or other family member's social security number; or a list of personal characteristics or other information that would make it possible to identify the infant, toddler, preschool child, child, parent, or other family member with reasonable certainty.

(nn) *Preschool children with disabilities*. These are students, ages 3–5 years (inclusive), who need special education services because they:

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: Cognitive development, physical development, communication development, social or emotional development, and adaptive development; and

(2) Who, by reason thereof, need special education and related services.

(oo) *Primary referral source*. The DoD Components, including child care centers, pediatric clinics, and parents that suspect an infant, toddler, preschool child or child has a disability and bring that infant, toddler, preschool child or child to the attention of the Early Intervention Program or school CSC.

(pp) *Public awareness program*. Activities focusing on early identification of infants and toddlers with disabilities, including the

preparation and dissemination by the military medical department to all primary referral sources of information materials for parents on the availability of early intervention services. Also includes procedures for determining the extent to which primary referral sources within the Department of Defense, especially within DoD medical treatment facilities, and physicians disseminate information on the availability of early intervention services to parents of infants or toddlers with disabilities.

(qq) *Qualified*. With respect to instructional personnel, a person who holds at a minimum a current and applicable teaching certificate from any of the 50 States, Puerto Rico, or the District of Columbia, or has met other pertinent requirements in the areas in which he or she is providing special education or related services not of a medical nature to children with disabilities. Providers of early intervention services and medically related services must meet standards established by the ASD(HA).

(rr) *Related services*. This includes transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology; psychological services; physical and occupational therapy; recreation, including therapeutic recreation and social work services; and medical and counseling services), including rehabilitation counseling (except that such medical services shall be for diagnostic and evaluative purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in preschool children or children. The following list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as clean intermittent catheterization), if they are required to assist a child with a disability to benefit from special education, as determined by a CSC.

(1) *Audiology*. This term includes: (i) Audiological, diagnostic, and prescriptive services provided by audiologists who have a Certificate of Clinical Competence—Audiology (CCC-A) and pediatric experience. Audiology shall not include speech therapy.

(ii) Identification of children with hearing loss.

(iii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention designed to ameliorate or correct that loss.

(iv) Provision of ameliorative and corrective activities, including language

and auditory training, speech-reading (lip-reading), hearing evaluation, speech conservation, the recommendation of amplification devices, and other aural rehabilitation services.

(v) Counseling and guidance of children, parents, and service providers regarding hearing loss.

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services*. Services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel to help a preschool child or child with a disability to benefit from special education.

(3) *Early identification*. The implementation of a formal plan for identifying a disability as early as possible in the individual's life.

(4) *Medical services*. Those evaluative, diagnostic, therapeutic, and supervisory services provided by a licensed and credentialed physician to assist CSCs in determining whether a child has a medically related disability condition that results in the child's need for special education and related services and to implement IEPs. Medical services include diagnosis, evaluation, and medical supervision of related services that, by statute, regulation, or professional tradition, are the responsibility of a licensed and credentialed physician.

(5) *Occupational therapy*. Therapy that provides developmental evaluations and treatment programs using selected tasks to restore, reinforce, or enhance functional performance. It addresses the quality and level of functions in areas such as behavior, motor coordination, spatial orientation; visual motor and sensory integration; and general activities of daily living. This therapy, which is conducted by a qualified occupational therapist, provides training and guidance in using special equipment to improve the patient's functioning in skills of daily living, work, and study.

(6) *Parent counseling and training*. Assisting parents in understanding the special needs of their preschool child or children and providing parents with information about child development and special education.

(7) *Physical therapy*. Therapy that provides evaluations and treatment programs using exercise, modalities, and adaptive equipment to restore, reinforce, or enhance motor performance. It focuses on the quality of movement, reflex development, range of motion, muscle strength, gait, and gross

motor development, seeking to decrease abnormal movement and posture while facilitating normal movement and equilibrium reactions. The therapy, which is conducted by a qualified physical therapist, provides for measurement and training in the use of adaptive equipment and prosthetic and orthotic appliances. When best efforts to obtain a qualified physical therapist fail, therapy may be conducted by a qualified physical therapist assistant under the clinical supervision of a qualified physical therapist.

(8) *Psychological services*. Services listed in paragraphs (rr)(8)(i) through (rr)(8)(iv) of this section that are provided by a qualified psychologist:

(i) Administering psychological and educational tests and other assessment procedures.

(ii) Interpreting test and assessment results.

(iii) Obtaining, integrating, and interpreting information about a preschool child's or child's behavior and conditions relating to his or her learning.

(iv) Consulting with other staff members in planning school programs to meet the special needs of preschool children and children, as indicated by psychological tests, interviews, and behavioral evaluations.

(v) Planning and managing a program of psychological services, including psychological counseling for preschool children, children, and parents. For the purpose of these activities, a qualified psychologist is a clinical psychologist licensed in a State of the United States who has a degree in clinical psychology and additional pediatric training and/or experience.

(9) *Recreation*. This term includes:

(i) Assessment of leisure activities.

(ii) Therapeutic recreational activities.

(iii) Recreational programs in schools and community agencies.

(iv) Leisure education.

(10) *School health services*. Services provided, pursuant to an IEP, by qualified school health nurse, or other qualified person, that are required for a preschool child or child with a disability to benefit from special education.

(11) *Social work counseling services in schools*. This term includes:

(i) Preparing a social and developmental history on a preschool child or child identified as having a disability.

(ii) Counseling the preschool child or child with a disability and his or her family on a group or individual basis, pursuant to an IEP.

(iii) Working with problems in a preschool child's or child's living

situation (home, school, and community) that adversely affect his or her adjustment in school.

(iv) Using school and community resources to enable the preschool child or children to receive maximum benefit from his or her educational program.

(12) *Speech pathology*. This term includes the:

(i) Identification of preschool children and children with speech or language disorders.

(ii) Diagnosis and appraisal of specific speech or language disorders.

(iii) Referral for medical or other professional attention to correct or ameliorate speech or language disorders.

(iv) Provision of speech and language services for the correction, amelioration, and prevention of communicative disorders.

(v) Counseling and guidance of preschool children, children, parents, and teachers regarding speech and language disorders.

(13) *Transportation*. This term includes transporting the individual with a disability and, when necessary, an attendant or family member or reimbursing the cost of travel (e.g., mileage, or travel by taxi, common carrier or other means) and related costs (e.g., tolls and parking expenses) when such travel is necessary to enable a preschool child or child to receive special education (including related services) or an infant or toddler and the infant's or toddler's family to receive early intervention services.

Transportation services include:

(i) Travel to and from school and between schools, including travel necessary to permit participation in educational and recreational activities and related services.

(ii) Travel from school to a medically related service site and return.

(iii) Travel in and around school buildings.

(iv) Travel to and from early intervention services.

(v) Specialized equipment (including special or adapted buses, lifts, and ramps) if required to provide special transportation for an individual with a disability.

(vi) If necessary, attendants assigned to vehicles transporting an individual with a disability when that individual requires assistance to be safely transported.

(ss) *Section 6 school arrangement*. The schools (pre-kindergarten through grade 12) operated by the Department of Defense within the CONUS, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

Section 6 School Arrangements are operated under DoD Directive 1342.21.⁴

(tt) *Separate facility*. A school or a portion of a school, regardless of whether it is used by the Section 6 School Arrangement, that is only attended by children with disabilities.

(uu) *Serious emotional disturbance*. The term includes:

(1) A condition that has been confirmed by clinical evaluation and diagnosis and that, over a long period of time and to a marked degree, adversely affects educational performance and that exhibits one or more of the following characteristics:

(i) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(iii) Inappropriate types of behavior under normal circumstances.

(iv) A tendency to develop physical symptoms or fears associated with personal or school problems.

(v) A general, pervasive mood of unhappiness or depression.

(2) Schizophrenia, but does not include children who are socially maladjusted, unless it is determined that they are otherwise seriously emotionally disturbed.

(vv) *Service provider*. Any individual who provides services listed in an IEP or an IFSP.

(ww) *Social work services*. This term includes:

(1) Preparing a social or developmental history on an infant, toddler, preschool child or child with a disability.

(2) Counseling with the infant, toddler, preschool child or child and family in a group or individual capacity.

(3) Working with individuals with disabilities (0-21 inclusive) in the home, school, and/or community environment to ameliorate those conditions that adversely affect development or educational performance.

(4) Using school and community resources to enable the child to receive maximum benefit from his or her educational program or for the infant, toddler, and family to receive maximum benefit from early intervention services.

(xx) *Special education*. Specially designed instruction, at no cost to the parent, to meet the unique needs of a preschool child or child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in

physical education. The term includes speech pathology or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a preschool child or child with a disability, and is considered "special education" rather than a "related service." The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(1) *At no cost*. With regard to a preschool child or child eligible to attend Section 6 School Arrangements, specially designed instruction and related services are provided without charge, but incidental fees that are normally charged to nondisabled students, or their parents, as a part of the regular educational program may be imposed.

(2) *Physical education*. The development of:

(i) Physical and motor fitness.

(ii) Fundamental motor skills and patterns.

(iii) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(iv) A program that includes special physical education, adapted physical education, movement education, and motor development.

(3) *Vocational education*. This term means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(yy) *Special instruction*. This term includes:

(1) Designing learning environments and activities that promote the infant's, toddler's, preschool child's or child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction.

(2) Planning curriculum, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the infant's, toddler's, preschool child's or child's IEP or IFSP.

(3) Providing families with information, skills, and support related to enhancing the skill development of the infant, toddler, or preschool child or child.

(4) Working with the infant, toddler, preschool child or child to enhance the infant's, toddler's, preschool child's or child's development and cognitive processes.

⁴ See footnote 1 to § 80.1 (c).

(zz) *Specific learning disability.* A disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself as an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include preschool children or children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, mental retardation, emotional disturbance, or environmental, cultural, or economic differences.

(aaa) *Speech and language impairments.* A communication disorder, such as stuttering, impaired articulation, voice impairment, or a disorder in the receptive or expressive areas of language that adversely affects a preschool child's or child's educational performance.

(bbb) *Superintendent.* The chief official of a Section 6 School Arrangement responsible for the implementation of this part on his or her installation.

(ccc) *Transition services.* A coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.

(ddd) *Traumatic brain injury.* An injury to the brain caused by an external physical force or by an internal occurrence, such as stroke or aneurysm, resulting in total or partial functional disability or psychosocial maladjustment that adversely affects educational performance. The term includes open or closed head injuries resulting in mild, moderate, or severe impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory; perceptual and motor abilities;

psychosocial behavior; physical function; and information processing and speech. The term does not include brain injuries that are congenital or degenerative or brain injuries that are induced by birth trauma.

(eee) *Vision services.* Services necessary to ameliorate the effects of sensory impairment resulting from a loss of vision.

(fff) *Visual impairment.* A sensory impairment including blindness that, even with correction, adversely affects a preschool child or child's educational performance. The term includes both partially seeing and blind preschool children and children.

§ 80.4 Policy.

It is DoD policy that:

(a) All individuals with disabilities ages 3 to 21 years receiving or entitled to receive educational instruction from the Section 6 School Arrangements shall be provided a free, appropriate education under this part in accordance with the IDEA, Pub. L. 101-476, as amended; the IDEA Amendments of 1991, Pub. L. 102-119, section 23; and DoD Directive 1342.21.

(b) All individuals with disabilities ages birth through 2 years (inclusive) and their families are entitled to receive early intervention services under this part, provided that such infants and toddlers would be eligible to enroll in a Section 6 School Arrangement but for their age.

§ 80.5 Responsibilities.

(a) The Assistant Secretary of Defense for Personnel and Readiness shall:

(1) Ensure that all infants and toddlers with disabilities (birth through 2 years inclusive) who but for their age would be eligible to attend the Section 6 Arrangement Schools, and their families are provided early intervention services in accordance with Pub. L. 101-476, as amended, and in conformity with the procedures in appendix A to this part.

(2) Ensure that preschool children and children with disabilities ages 3-21 years (inclusive) receiving educational instruction from Section 6 School Arrangements are provided a free appropriate public education and that the educational needs of such preschool children and children with disabilities are met using the procedures established by this part.

(3) Ensure that educational facilities and services provided by Section 6 School Arrangements for preschool children and children with disabilities are comparable to educational facilities and services for non-disabled students.

(4) Maintain records on special education and related services provided

to children with disabilities, consistent with 32 CFR part 310.

(5) Ensure the provision of all necessary diagnostic services and special education and related services listed on an IEP (including those supplied by or under the supervision of physicians) to preschool children and children with disabilities who are enrolled in Section 6 School Arrangements.

In fulfilling this responsibility, the Assistant Secretary of Defense (Personnel and Readiness), (ASD(P&R)), or designee, may use intercomponent arrangements, or act through contracts with private parties, when funds are authorized and appropriated.

(6) Develop and implement a comprehensive system of personnel development, in accordance with 20 U.S.C. 1413(a)(3), for all professional staff employed by a Section 6 School Arrangement. This system shall include:

(a) Inservice training of general and special educational instructional and support personnel.

(b) Implementing innovative strategies and activities for the recruitment and retention of medically related service providers.

(c) Detailed procedures to assure that all personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, and

(d) Effective procedures for acquiring and disseminating to teachers and administrators of programs for children with disabilities significant information derived from educational research, demonstration, and similar projects, and

(e) Adopting, where appropriate, promising practices, materials, and technology.

(7) Provide technical assistance to professionals in Section 6 School Arrangements involved in, or responsible for, the education of preschool children or children with disabilities.

(8) Ensure that child-find activities are coordinated with other relevant components and are conducted to locate and identify every individual with disabilities.

(9) Issue guidance implementing this part.

(10) Undertake evaluation activities to ensure compliance with this part through monitoring, technical assistance, and program evaluation.

(11) Chair the DOD Coordinating Committee on Domestic Early Intervention, Special Education, and Related Services, which shall be composed of representatives of the Secretaries of the Military Departments, the Assistant Secretary of Defense for

Health Affairs (ASD(HA)), the General Counsel of the Department of Defense (GC, DOD), and the Director, Section 6 Schools.

(12) Through the DOD Coordinating Committee on Domestic Early Intervention, Special Education, and Related Services, monitor the provision of special education and related services and early intervention services furnished under this part, and ensure that related services, special education, and early intervention services are properly coordinated.

(13) Ensure that appropriate personnel are trained to provide mediation services in cases that otherwise might result in due process proceedings under this part.

(14) Ensure that transition services from early intervention services to regular or special education and from special education to the world of work are provided.

(15) Ensure that all DOD programs that provide services to infants and toddlers and their families (e.g., child care, medical care, recreation) are involved in a comprehensive intercomponent system for early intervention services.

(16) Ensure, whenever practicable, that planned construction not yet past the 35 percent design phase and new design begun after the date of this part or renovation of school or child care facilities includes consideration of the space required for the provision of medically related services and early intervention services.

(17) The Domestic Advisory Panel shall:

(i) Consist of members appointed by the ASD(P&R) or Principal Deputy ASD(P&R). Membership shall include at least one representative from each of the following groups:

- (A) Individuals with disabilities.
- (B) Parents, including minority parents of individuals with disabilities from various age groups.
- (C) Section 6 School Arrangements special education teachers.
- (D) Section 6 School Arrangements regular education teachers.
- (E) Section 6 School Arrangements Superintendent office personnel.
- (F) The Office of Director, Section 6 Schools.
- (G) The Surgeons General of the Military Departments.
- (H) The Family Support Programs of the Military Departments.
- (I) Section 6 School Arrangements School Boards.
- (J) Early Intervention service providers on installations with Section 6 School Arrangements.
- (K) Other appropriate personnel.

(ii) Meet as often as necessary.

(iii) Perform the following duties:

(A) Review information and provide advice to ASD(P&R) regarding improvements in services provided to individuals with disabilities in Section 6 Schools and early intervention programs.

(B) Receive and consider the views of various parent, student, and professional groups, and individuals with disabilities.

(C) When necessary, establish committees for short-term purposes composed of representatives from parent, student, family and other professional groups, and individuals with disabilities.

(D) Review the findings of fact and decision of each impartial due process hearing conducted pursuant to this part.

(E) Assist in developing and reporting such information and evaluations as may aid Section 6 Schools and the Military Departments in the performance of duties under this part.

(F) Make recommendations, based on program and operational information, for changes in the budget, organization, and general management of the special education program, and in policy and procedure.

(G) Comment publicly on rules or standards regarding the education of individuals with disabilities.

(H) Assist in developing recommendations regarding the transition of toddlers with disabilities to preschool services.

(b) The Assistant Secretary of Defense for Health Affairs in consultation with the ASD(P&R), the GC, DoD, and the Secretaries of the Military Departments, shall:

(1) Establish staffing and personnel standards for personnel who provide early intervention services and medically related services.

(2) Develop and implement a comprehensive system of personnel development in accordance with 20 U.S.C. 1413-(a)(3), including the training of professionals, paraprofessionals and primary referral sources, regarding the basic components of early intervention services and medically related services. Such a system may include:

(i) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers.

(ii) Ensuring that early intervention service providers and medically related service providers are fully and appropriately qualified to provide early intervention services and medically related services, respectively.

(iii) Training personnel to work in the military environment.

(iv) Training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program to a preschool program.

(3) Develop and implement a system for compiling data on the numbers of infants and toddlers with disabilities and their families in need of appropriate early intervention services, the numbers of such infants and toddlers and their families served, the types of services, and other information required to evaluate the implementation of early intervention programs.

(4) Resolve disputes among the DoD Components arising under appendix A to this part.

(c) The Secretaries of the Military Departments shall:

(1) Provide quality assurance for medically related services in accordance with personnel standards and staffing standards under DoD Directive 6025.13⁵ developed by the Assistant Secretary of Defense for Health Affairs (ASD(HA)).

(2) Plan, develop, and implement a comprehensive, coordinated, intercomponent, community-based system of early intervention services for infants and toddlers with disabilities (birth through 2 inclusive) and their families who are living on an installation with a Section 6 School Arrangement, using the procedures established by this part and guidelines from the ASD(HA) on staffing and personnel standards.

(3) Undertake activities to ensure compliance with this part through technical assistance, program evaluation, and monitoring.

(d) The Director, Directorate for Industrial Security Clearance Review (DISCR) shall ensure the provision of impartial due process hearings under appendix C to this part.

§ 80.6 Procedures.

(a) Procedures for the provision of early intervention services for infants and toddlers with disabilities and their families are in appendix A to this part. Provision of early intervention services includes establishing a system of coordinated, comprehensive, multidisciplinary, intercomponent services providing appropriate early intervention services to all eligible infants and toddlers with disabilities and their families.

(b) Procedures for special educational programs (including related services) for preschool children and children with

⁵ See footnote 1 to § 80.1 (c).

disabilities (3–21 years inclusive) are in appendix B to this part.

(c) Procedures for adjudicative requirements required by Pub. L. 101–476, as amended, and Pub. L. 102–119 are in appendix C to this part. These procedures establish adjudicative requirements whereby the parents of an infant, toddler, preschool child or child with a disability and the military department concerned or Section 6 School System are afforded an impartial due process hearing on early intervention services or on the identification, evaluation, and educational placement of, and the free appropriate public education provided to, such infant, toddler, preschool child or child, as the case may be.

Appendix A to Part 80—Procedures for the Provision of Early

Intervention Services for Infants And Toddlers With Disabilities, Ages 0–2 Years (Inclusive), and Their Families

A. Requirements for a System of Early Intervention Services

1. A system of coordinated, comprehensive, multidisciplinary, and interagency programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families shall include the following minimum components:
 - a. A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant and toddler with a disability and the priorities and concerns of the infant's or toddler's family to assist in the development of the infant or toddler with a disability.
 - b. A mechanism to develop, for each infant and toddler with a disability, an IFSP and early intervention services coordination, in accordance with such service plan.
 - c. A comprehensive child-find system, coordinated with the appropriate Section 6 School Arrangement, including a system for making referrals to service providers that includes timeliness and provides for participation by primary referral sources, such as the CDC and the pediatric clinic.
 - d. A public awareness program including information on early identification of infants and toddlers with disabilities and the availability of resources in the community to address and remediate these disabilities.
 - e. A central directory that includes a description of the early intervention services and other relevant resources available in the community.

B. Each Military Medical Department Shall Develop and Implement a System To Provide for:

1. The administration and supervision of early intervention programs and services, including the identification and coordination of all available resources.
2. The development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families in a timely manner.

3. The execution of agreements with other DoD components necessary for the implementation of this appendix. Such agreements must be coordinated with the ASD(HA) and the GC, DoD, in consultation with the ASD(P&R).

4. The collection and reporting of data required by ASD(HA).

5. A multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs.

6. A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of its infant or toddler with a disability.

C. Each Military Medical Department Shall Develop and Implement a Program To Ensure That an IFSP is Developed for Each Infant or Toddler With a Disability and the Infant's or Toddler's Family According to the Following Procedures:

1. The IFSP shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate), based on the needs of the infant or toddler and family.
2. Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:
 - a. The parent or parents of the infant or toddler.
 - b. Other family members, as requested by a parent, if feasible to do so.
 - c. An advocate, if his or her participation is requested by a parent.
 - d. The Early Intervention Program Services Coordinator who has been working with the family since the initial referral of the infant or toddler or who has been designated as responsible for the implementation of the IFSP.
 - e. A person or persons directly involved in conducting the evaluation and assessments.
 - f. Persons who will be providing services to the infant, toddler, or family, as appropriate.
3. The IFSP shall be developed within a reasonable time after the assessment. With the parent's consent, early intervention services may start before the completion of such an assessment under an IFSP.
4. The IFSP shall be in writing and contain:
 - a. A statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on acceptable objective criteria.
 - b. A statement of the family's resources, priorities, and concerns for enhancing the development of the family's infant or toddler with a disability.
 - c. A statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary.
 - d. A statement of the specific early intervention services necessary to meet the

unique needs of the infant or toddler and the family, including the frequency, intensity, and the method of delivering services.

e. A statement of the natural environments in which early intervention services shall be provided.

f. The projected dates for initiation of services and the anticipated duration of such services.

g. The name of the Early Intervention Program Service Coordinator.

h. The steps to be taken supporting the transition of the toddler with a disability to preschool services or other services to the extent such services are considered appropriate.

5. The contents of the IFSP shall be fully explained to the parents by the Early Intervention Program Service Coordinator, and informed written consent from such parents shall be obtained before the provision of early intervention services described in such plan. If the parents do not provide such consent with respect to a particular early intervention service, then the early intervention services to which such consent is obtained shall be provided.

D. Procedural Safeguards for the Early Intervention Program

1. The procedural safeguards include:
 - a. The timely administrative resolution of complaints by the parent(s), including hearing procedures (appendix C to this part).
 - b. The right to protection of personally identifiable information under 32 CFR part 310.
 - c. The right of the parent(s) to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service without jeopardizing the delivery of other early intervention services to which such consent is obtained.
 - d. The opportunity for the parent(s) to examine records on assessment, screening, eligibility determinations, and the development and implementation of the IFSP.
 - e. Written prior notice to the parent(s) of the infant or toddler with a disability whenever the Military Department concerned proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services to the infant and toddler with a disability.
 - f. Procedures designed to ensure that the notice required in paragraph D.1.e. of this appendix fully informs the parents in the parents' native language, unless it clearly is not feasible to do so.
 - g. During the pendency of any proceeding under appendix C to this part 80, unless the Military Department concerned and the parent(s) otherwise agree, the infant or toddler shall continue to receive the early intervention services currently being provided, or, if applying for initial services, shall receive the services not in dispute.

Appendix B to Part 80—Procedures for Special Educational Programs (Including Related Services) for Preschool Children and Children With Disabilities (3–21 Years Inclusive)

A. Identification and Screening

1. Each Section 6 School Arrangement shall locate, identify, and, with the consent of a parent of each preschool child or children, evaluate all preschool school children or children who are receiving or are entitled to receive an education from Section 6 School Arrangements and who may need special education and/or related services.

2. Each Section 6 School Arrangement shall:

a. Provide screening, through the review of incoming records and the use of basic skills tests in reading, language arts, and mathematics, to determine whether a preschool child or child may be in need of special education and related services.

b. Analyze school health data for those preschool children and children who demonstrate possible disabling conditions. Such data shall include:

(1) Results of formal hearing, vision, speech, and language tests.

(2) Reports from medical practitioners.

(3) Reports from other appropriate professional health personnel as may be necessary, under this part, to aid in identifying possible disabling conditions.

c. Analyze other pertinent information, including suspensions, exclusions, other disciplinary actions, and withdrawals, compiled and maintained by Section 6 School Arrangements that may aid in identifying possible disabling conditions.

3. Each Section 6 School Arrangement, in cooperation with cognizant authorities at the installation on which the Section 6 School Arrangement is located, shall conduct ongoing child-find activities that are designed to identify all infants, toddlers, preschool children, and children with possible disabling conditions who reside on the installation or who otherwise either are entitled, or will be entitled, to receive services under this part.

a. If an element of the Section 6 School Arrangement, a qualified professional authorized to provide related services, a parent, or other individual believes that an infant, toddler, preschool child or child has a possible disabling condition, that individual shall be referred to the appropriate CSC or early intervention coordinator.

b. A Section 6 School Arrangement CSC shall work in cooperation with the Military Departments in identifying infants, toddlers, preschool children and children with disabilities (birth to 21 years inclusive).

B. Evaluation Procedures

1. Each CSC will provide a full and comprehensive diagnostic evaluation of special educational, and related service needs to any preschool child or child who is receiving, or entitled to receive, educational instruction from a Section 6 School Arrangement, operated by the Department of Defense under Directive 1342.21, and who is referred to a CSC for a possible disability.

The evaluation will be conducted before any action is taken on the development of the IEP or placement in a special education program.

2. Assessment materials, evaluation procedures, and tests shall be:

a. Racially and culturally nondiscriminatory.

b. Administered in the native language or mode of communication of the preschool child or child, unless it clearly is not feasible to do so.

c. Validated for the specific purpose for which they are used or intended to be used.

d. Administered by qualified personnel, such as a special educator, school psychologist, speech therapist, or a reading specialist, in conformity with the instructions provided by the producers of the testing device.

e. Administered in a manner so that no single procedure is the sole criterion for determining eligibility and an appropriate educational program for a disabled preschool child or child.

f. Selected to assess specific areas of educational strengths and needs, not merely to provide a single general intelligence quotient.

3. The evaluation shall be conducted by a multidisciplinary team and shall include a teacher or other specialist with knowledge in the areas of the suspected disability.

4. The preschool child or child shall be evaluated in all areas related to the suspected disability. When necessary, the evaluation shall include:

a. The current level of academic functioning, to include general intelligence.

b. Visual and auditory acuity.

c. Social and emotional status, to include social functioning within the educational environment and within the family.

d. Current physical status, including perceptual and motor abilities.

e. Vocational transitional assessment (for children ages 14–21 years (inclusive)).

5. The appropriate CSC shall meet as soon as possible after the preschool child's or child's formal evaluation to determine whether he or she is in need of special education and related services. The preschool child's or child's parents shall be invited to the meeting and afforded the opportunity to participate in such a meeting.

6. The school CSC shall issue a written report that contains:

a. A review of the formal and informal diagnostic evaluation findings of the multidisciplinary team.

b. A summary of information from the parents, the preschool child or child, or other persons having significant previous contact with the preschool child or child.

c. A description of the preschool child's or child's current academic progress, including a statement of his or her learning style.

d. A description of the nature and severity of the preschool child's or child's disability(ies).

7. A preschool child or child with a disability shall receive an individual comprehensive diagnostic evaluation every 3 years, or more frequently if conditions warrant, or if the preschool child's or child's parent, teacher, or related service provider requests an evaluation. The scope and nature

of the reevaluation shall be determined individually, based upon the preschool child's or child's performance, behavior, and needs when the reevaluation is conducted, and be used to update or revise the IEP.

C. Individualized Education Program (IEP)

1. Section 6 School Arrangements shall ensure that an IEP is developed and implemented for each preschool child or child with a disability enrolled in a Section 6 School Arrangement or placed on another institution by a Section 6 School Arrangement CSC under this part.

2. Each IEP shall include:

a. A statement of the preschool child's or child's present levels of educational performance.

b. A statement of annual goals, including short-term instructional objectives.

c. A statement of the specific special educational services and related services to be provided to the preschool child or child (including the frequency, number of times per week/month and intensity, amount of times each day) and the extent to which the preschool child or child may be able to participate in regular educational programs.

d. The projected anticipated date for the initiation and the anticipated length of such activities and services.

e. Appropriate objective criteria and evaluation procedures and schedules for determining, on an annual basis, whether educational goals and objectives are being achieved.

f. A statement of the needed transition services for the child beginning no later than age 16 and annually thereafter (and when determined appropriate for the child, beginning at age 14 or younger) including, when appropriate, a statement of DoD Component responsibilities before the child leaves the school setting.

3. Each preschool child or child with a disability shall be provided the opportunity to participate, with adaptations when appropriate, in the regular physical education program available to students without disabilities unless:

a. The preschool child or child with a disability is enrolled full-time in a separate facility; or

b. The preschool child or child with a disability needs specially designed physical education, as prescribed in his or her IEP.

4. If specially designed physical education services are prescribed in the IEP of a preschool child or child with a disability, the Section 6 School Arrangement shall provide such education directly, or shall make arrangements for the services to be provided through a non-Section 6 School Arrangement or another facility.

5. Section 6 School Arrangements shall ensure that a preschool child or child with a disability, enrolled by a CSC in a separate facility, receives appropriate, physical education in compliance with this part.

6. The IEP for each preschool child or child with a disability shall be developed and reviewed at least annually in meetings that include the following participants:

a. The designated representative of the Section 6 School Arrangement, who is qualified to supervise the provision of special

education. Such representative may not be the preschool child's or child's special education teacher.

b. One, or more, of the preschool child's or child's regular teachers, if appropriate.

c. The preschool child's or child's special education teacher or teachers.

d. One, or both, of the preschool child's or child's parents.

e. The child, if appropriate.

f. For a preschool child or child with a disability who has been evaluated, a member of the evaluation team or another person knowledgeable about the evaluation procedures used with that student and familiar with the results of the evaluation.

g. Other individuals, at the reasonable discretion of the parent(s) or the school.

7. Section 6 School Arrangements shall:

a. Ensure that an IEP meeting is held, normally within 10 working days, following a determination by the appropriate CSC that the preschool child or child is eligible to receive special education and/or related services.

b. Address the needs of a preschool child or child with a current IEP who transfers from a school operated by the DoD in accordance with 32 CFR part 347¹ or from a Section 6 School Arrangement to a Section 6 School Arrangement, by:

(1) Implementing the current IEP; or

(2) Revising the current IEP with the consent of a parent; or

(3) Initiating, with the consent of a parent, an evaluation of the preschool child or child, while continuing to provide appropriate services through a current IEP; or

(4) Initiating, with the consent of the parent, an evaluation of the preschool child or child without the provision of the services in the current IEP; or

(5) Initiating mediation, and if necessary, due process procedures.

c. Afford the preschool child's or child's parent(s) the opportunity to participate in every IEP or CSC meeting about their preschool child or child by:

(1) Providing the parent(s) adequate written notice of the purpose, time, and place of the meeting.

(2) Attempting to schedule the meeting at a mutually agreeable time and place.

8. If neither parent can attend the meeting, other methods to promote participation by a parent, such as telephone conversations and letters, shall be used.

9. A meeting may be conducted without a parent in attendance if the Section 6 School Arrangement is unable to secure the attendance of the parent. In this case, the Section 6 School Arrangement must have written records of its attempts to arrange a mutually acceptable time and place.

10. If the parent(s) attends the IEP meeting, the Section 6 School Arrangement shall take necessary action to ensure that at least one of the parents understands the proceedings at the meeting, including providing an interpreter for a parent who is deaf or whose native language is other than English.

11. The Section 6 School Arrangement shall give a parent a copy of the preschool child's or child's IEP.

12. Section 6 School Arrangements shall provide special education and related services, in accordance with an IEP, provided that the Department of Defense, its constituent elements, and its personnel, are not accountable if a preschool child or child does not achieve the growth projected in the IEP.

13. Section 6 School Arrangements shall ensure that an IEP is developed and implemented for each preschool child or child with a disability whom the CSC places in a non-Section 6 School or other facility.

D. Placement Procedures and Least Restrictive Environment

1. The placement of a preschool child or child in any special education program by the Section 6 School Arrangement shall be made only under an IEP and after a determination has been made that such student has a disability and needs special education and/or related services.

2. The Section 6 School Arrangement CSC shall identify the special education and related services to be provided under the IEP.

3. A placement decision may not be implemented without the consent of a parent of the preschool child or child, except as otherwise provided in accordance with this part.

4. The placement decision must be designed to educate a preschool child or child with a disability in the least restrictive environment so that such student is educated to the maximum extent appropriate with students who do not have disabilities. Special classes, separate schooling, or other removal of preschool children or children with disabilities from the regular educational environment shall occur only when the nature or severity of the disability is such that the preschool child or child with disabilities cannot be educated satisfactorily in the regular classes with the use of supplementary aids and services, including related services.

5. Each educational placement for a preschool child or child with a disability shall be:

a. Determined at least annually by the appropriate CSC.

b. Based on the preschool child or child's IEP.

c. Located as close as possible to the residence of the parent who is sponsoring the preschool child or child for attendance in a Section 6 School Arrangement.

d. Designed to assign the preschool child or child to the school such student would attend if he or she were not a student with a disability, unless the IEP requires some other arrangement.

e. Predicated on the consideration of all factors affecting the preschool child's or child's well-being, including the effects of separation from parent(s).

f. To the maximum extent appropriate, designed so that the preschool child or child participates in school activities, including meals and recess periods, with students who do not have a disability.

E. Children With Disabilities Placed in Non-Section 6 School Arrangements

1. Before a Section 6 School Arrangement CSC, with the concurrence of the Section 6 School Arrangement Superintendent concerned, places a preschool child or child with a disability in a non-Section 6 School or facility, the Section 6 School CSC shall conduct a meeting in accordance with this part to initiate the development of an IEP for such student.

2. Preschool children and children with disabilities eligible to receive instruction in Section 6 School Arrangements who are referred to another school or facility by the Section 6 School CSC have all the rights of students with disabilities who are attending the Section 6 School Arrangement.

a. If a Section 6 School Arrangement CSC places a preschool child or child with a disability in a non-Section 6 School Arrangement or facility as a means of providing special education and related services, the program of that facility, including nonmedical care, room, and board, as set forth in the student's IEP, must be at no cost to the student or the student's parents.

b. A Section 6 School Arrangement CSC may place a preschool child or child with a disability in a non-Section 6 School Arrangement or facility only if required by an IEP. An IEP for a student placed in a non-Section 6 school is not valid until signed by the Section 6 School Arrangement Superintendent, or designee, who must have participated in the IEP meeting. The IEP shall include determinations that:

(1) The Section 6 School Arrangement does not currently have, and cannot reasonably create, an educational program appropriate to meet the needs of the student with a disability.

(2) The non-Section 6 School Arrangement or facility and its educational program conform to this part.

3. A Section 6 School Arrangement is not responsible for the cost of a non-Section 6 School Arrangement placement when placement is made unilaterally, without the approval of the cognizant CSC and the superintendent, unless it is directed by a hearing officer under appendix C of this part or a court of competent jurisdiction.

F. Procedural Safeguards

1. Parents shall be given written notice before the Section 6 School Arrangement CSC proposes to initiate or change, or refuses to initiate or change, either the identification, evaluation, or educational placement of a preschool child or child receiving, or entitled to receive, special education and related services from a Section 6 School Arrangement, or the provision of a free appropriate public education by the Section 6 School Arrangement to the child. The notice shall fully inform a parent of the procedural rights conferred by this part and shall be given in the parent's native language, unless it clearly is not feasible to do so.

2. The consent of a parent of a preschool child or child with a disability or suspected of having a disability shall be obtained before any:

a. Initiation of formal evaluation procedures;

¹ Copies of DoD Directive 1342.6 may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

- b. Initial special educational placement; or
- c. Change in educational placement.

3. If a parent refuses consent to any formal evaluation or initial placement in a special education program, the Section 6 School Arrangement Superintendent may initiate an impartial due process hearing, as provided in appendix C of this part to show why an evaluation or placement in a special education program should occur without such consent. If the hearing officer sustains the Section 6 School Arrangement CSC position in the impartial due process hearing, the appropriate CSC may evaluate or provide special education and related services to the preschool child or child without the consent of a parent, subject to the parent's due process rights.

4. A parent is entitled to an independent evaluation of his or her preschool child or child at the Section 6 School Arrangement's expense, if the parent disagrees with the findings of an evaluation of the student conducted by the school and the parent successfully challenges the evaluation in an impartial due process hearing.

a. If an independent evaluation is provided at the expense of a Section 6 School Arrangement, it must meet the following criteria:

- (1) Conform to the requirements of this part.

(2) Be conducted, when possible, within the area where the preschool child or child resides.

(3) Meet applicable DoD standards governing persons qualified to conduct an evaluation.

b. If the final decision rendered in an impartial due process hearing sustains the evaluation of the Section 6 School Arrangement CSC, the parent has the right to an independent evaluation, but not at the expense of the Department of Defense or any DoD Component.

5. The parents of a preschool child or child with a disability shall be afforded an opportunity to inspect and review all relevant educational records concerning the identification, evaluation, and educational placement of such student; and the provision of a free appropriate public education to him or her.

6. Upon complaint presented in a written petition, the parent of a preschool child or child with a disability or the Section 6 School System shall have the opportunity for an impartial due process hearing provided by the Department of Defense as prescribed by appendix C of this part.

7. During the pendency of any impartial due process hearing or judicial proceeding on the identification, evaluation, or educational placement of a preschool child or child with a disability receiving an education from a Section 6 School Arrangement or the provision of a free appropriate public education to such a student, unless the Section 6 School Arrangement and a parent of the student agree otherwise, the student shall remain in his or her present educational placement, subject to the disciplinary procedures prescribed in this part.

8. If a preschool child or child with a disability, without a current IEP, who is entitled to receive educational instruction

from a Section 6 School Arrangement is applying for initial admission to a Section 6 School Arrangement, that student shall enter that Arrangement on the same basis as a student without a disability.

9. The parent of a preschool child or child with a disability or a Section 6 School Arrangement employee may file a written communication with the Section 6 School Arrangement Superintendent about possible general violations of this part or Pub. L. 101-476, as amended. Such communications will not be treated as complaints under appendix C of this part.

G. Disciplinary Procedures

1. All regular disciplinary rules and procedures applicable to students receiving educational instruction in the Section 6 School Arrangements shall apply to preschool children and children with disabilities who violate school rules and regulations or disrupt regular classroom activities, subject to the provisions of this section.

2. The appropriate CSC shall determine whether the conduct of a preschool child or child with a disability is the result of that disability before the long-term suspension (10 consecutive or cumulative days during the school year) or the expulsion of that student.

3. If the CSC determines that the conduct of such a preschool child or child with a disability results in whole or part from his or her disability, that student may not be subject to any regular disciplinary rules and procedures; and

a. The student's parent shall be notified in accordance with this part of the right to have an IEP meeting before any change in the student's special education placement. (A termination of the student's education for more than 10 days, either cumulative or consecutive, constitutes a change of placement.)

b. The Section 6 School Arrangement CSC or another authorized school official shall ensure that an IEP meeting is held to determine the appropriate educational placement for the student in consideration of his or her conduct before the tenth cumulative day of the student's suspension or an expulsion.

4. A preschool child or child with a disability shall neither be suspended for more than 10 days nor expelled, and his or her educational placement shall not otherwise be changed for disciplinary reasons, unless in accordance with this section, except that:

a. This section shall be applicable only to preschool children and children determined to have a disability under this part.

b. Nothing contained herein shall prevent the emergency suspension of any preschool child or child with a disability who endangers or reasonably appears to endanger the health, welfare, or safety of himself or herself, or any other student, teacher, or school personnel, provided that:

(1) The appropriate Section 6 School Arrangement CSC shall immediately meet to determine whether the preschool child's or child's conduct results from his or her disability and what change in special

education placement is appropriate for that student.

(2) The child's parent(s) shall be notified immediately of the student's suspension and of the time, purpose, and location of the CSC meeting and their right to attend the meeting.

(3) A component is included in the IEP that addresses the behavioral needs of the student.

(4) The suspension of the student is only effective for the duration of the emergency.

Appendix C to Part 80—Hearing Procedures

A. Purpose

This appendix establishes adjudicative requirements whereby the parents of infants, toddlers, preschool children, and children who are covered by this part and, as the case may be, the cognizant Military Department or Section 6 School System are afforded impartial due process hearings and administrative appeals on the early intervention services or identification, evaluation, and educational placement of, and the free appropriate public education provided to, such children by the Department of Defense, in accordance with Pub. L. 101-476, as amended, 20 U.S.C. 1401 *et seq.*; Pub. L. 81-874, sec. 6, as amended, 20 U.S.C. 241; Pub. L. 97-35, sec. 505(c), 20 U.S.C. 241 note; and Pub. L. 102-119, sec. 23, 20 U.S.C. 241(a).

B. Administration

1. The Directorate for Industrial Security Clearance Review (DISCR) shall have administrative responsibility for the proceedings authorized by this appendix.

2. This appendix shall be administered to ensure that the findings, judgments, and determinations made are prompt, fair, and impartial.

3. Impartial hearing officers, who shall be DISCR Administrative Judges, shall be appointed by the Director, DISCR, and shall be attorneys who are independent of the Section 6 School System or the Military Department concerned in proceedings conducted under this appendix. A parent shall have the right to be represented in such proceedings, at no cost to the government, by counsel and by persons with special knowledge or training with respect to the problems of individuals with disabilities. DISCR Department Counsel normally shall appear and represent the Section 6 School System in proceedings conducted under this appendix, when such proceedings involve a preschool child or child. When an infant or toddler is involved, the Military Department responsible under this part for delivering early intervention services shall either provide its own counsel or request counsel from DISCR.

C. Mediation

1. Mediation can be initiated by either a parent or, as appropriate, the Military Department concerned or the Section 6 School System to resolve informally a disagreement on the early intervention services for an infant or toddler or the identification, evaluation, educational placement of, or the free appropriate public education provided to, a preschool child or child. The cognizant Military Department,

rather than the Section 6 School System, shall participate in mediation involving early intervention services. Mediation shall consist of, but not be limited to, an informal discussion of the differences between the parties in an effort to resolve those differences. The parents and the appropriate school or Military Department officials may attend mediation sessions.

2. Mediation must be conducted, attempted, or refused in writing by a parent of the infant, toddler, preschool child or child whose early intervention or special education services (including related services) are at issue before a request for, or initiation of, a hearing authorized by this appendix. Any request by the Section 6 School System or Military Department for a hearing under this appendix shall state how this requirement has been satisfied. No stigma may be attached to the refusal of a parent to mediate or to an unsuccessful attempt to mediate.

D. Practice and Procedure

1. Hearing

a. Should mediation be refused or otherwise fail to resolve the issues on the provision of early intervention services or a free, appropriate public education to a disabled infant, toddler, preschool child or child or the identification, evaluation, or educational placement of such an individual, the parent or either the school principal, on behalf of the Section 6 School System, or the military medical treatment facility commander, on behalf of the Military Department having jurisdiction over the infant or toddler, may request and shall receive a hearing before a hearing officer to resolve the matter. The parents of an infant, toddler, preschool child or child and the Section 6 School System or Military Department concerned shall be the only parties to a hearing conducted under this Appendix.

b. The party seeking the hearing shall submit a written request, in the form of a petition, setting forth the facts, issues, and proposed relief, to the Director, DISCR. The petitioner shall deliver a copy of the petition to the opposing party (that is, the parent or the school principal, on behalf of the Section 6 School System, or the military medical treatment facility commander, on behalf of the Military Department), either in person or by first-class mail, postage prepaid. Delivery is complete upon mailing. When the Section 6 School System or Military Department petitions for a hearing, it shall inform the other parties of the deadline for filing an answer under paragraph D.1.c. of this appendix, and shall provide the other parties with a copy of this part.

c. An opposing party shall submit an answer to the petition to the Director, DISCR, with a copy to the petitioner, within 15 calendar days of receipt of the petition. The answer shall be as full and complete as possible, addressing the issues, facts, and proposed relief. The submission of the answer is complete upon mailing.

d. Within 10 calendar days after receiving the petition, the Director, DISCR, shall assign a hearing officer, who then shall have jurisdiction over the resulting proceedings.

The Director, DISCR, shall forward all pleadings to the hearing officer.

e. The questions for adjudication shall be based on the petition and the answer, provided that a party may amend a pleading if the amendment is filed with the hearing officer and is received by the other parties at least 5 calendar days before the hearing.

f. The Director, DISCR, shall arrange for the time and place of the hearing, and shall provide administrative support. Such arrangements shall be reasonably convenient to the parties.

g. The purpose of a hearing is to establish the relevant facts necessary for the hearing officer to reach a fair and impartial determination of the case. Oral and documentary evidence that is relevant and material may be received. The technical rules of evidence shall be relaxed to permit the development of a full evidentiary record, with the Federal Rules of Evidence (28 U.S.C.) serving as a guide.

h. The hearing officer shall be the presiding officer, with judicial powers to manage the proceeding and conduct the hearing. Those powers shall include the authority to order an independent evaluation of the child at the expense of the Section 6 School System or Military Department concerned and to call and question witnesses.

i. Those normally authorized to attend a hearing shall be the parents of the individual with disabilities, the counsel and personal representative of the parents, the counsel and professional employees of the Section 6 School System or Military Department concerned, the hearing officer, and a person qualified to transcribe or record the proceedings. The hearing officer may permit other persons to attend the hearing, consistent with the privacy interests of the parents and the individual with disabilities, provided the parents have the right to an open hearing upon waiving in writing their privacy rights and those of the individual with disabilities.

j. A verbatim transcription of the hearing shall be made in written or electronic form and shall become a permanent part of the record. A copy of the written transcript or electronic record of the hearing shall be made available to a parent upon request and without cost. The hearing officer may allow corrections to the written transcript or electronic recording for the purpose of conforming it to actual testimony after adequate notice of such changes is given to all parties.

k. The hearing officer's decision of the case shall be based on the record, which shall include the petition, the answer, the written transcript or the electronic recording of the hearing, exhibits admitted into evidence, pleadings or correspondence properly filed and served on all parties, and such other matters as the hearing officer may include in the record, provided that such matter is made available to all parties before the record is closed under paragraph D.1.m. of this appendix.

l. The hearing officer shall make a full and complete record of a case presented for adjudication.

m. The hearing officer shall decide when the record in a case is closed.

n. The hearing officer shall issue findings of fact and render a decision in a case not later than 50 calendar days after being assigned to the case, unless a discovery request under section D.2. of this appendix is pending.

2. Discovery

a. Full and complete discovery shall be available to parties to the proceeding, with the Federal Rules of Civil Procedure (28 U.S.C.) serving as a guide.

b. If voluntary discovery cannot be accomplished, a party seeking discovery may file a motion to accomplish discovery, provided such motion is founded on the relevance and materiality of the proposed discovery to the issues. An order granting discovery shall be enforceable as is an order compelling testimony or the production of evidence.

c. A copy of the written or electronic transcription of a deposition taken by the Section 6 School System or Military Department concerned shall be made available free of charge to a parent.

3. Witnesses; Production of Evidence

a. All witnesses testifying at the hearing shall be advised that it is a criminal offense knowingly and willfully to make a false statement or representation to a Department or Agency of the United States Government as to any matter within the jurisdiction of that Department or Agency. All witnesses shall be subject to cross-examination by the parties.

b. A party calling a witness shall bear the witness' travel and incidental expenses associated with testifying at the hearing. The Section 6 School System or Military Department concerned shall pay such expenses when a witness is called by the hearing officer.

c. The hearing officer may issue an order compelling the attendance of witnesses or the production of evidence upon the hearing officer's own motion or, if good cause be shown, upon motion of a party.

d. When the hearing officer determines that a person has failed to obey an order to testify or to produce evidence, and such failure is in knowing and willful disregard of the order, the hearing officer shall so certify.

e. The party or the hearing officer seeking to compel testimony or the production of evidence may, upon the certification provided for in paragraph D.3.d. of this section, file an appropriate action in a court of competent jurisdiction to compel compliance with the hearing officer's order.

4. Hearing Officer's Findings of Fact and Decision

a. The hearing officer shall make written findings of fact and shall issue a decision setting forth the questions presented, the resolution of those questions, and the rationale for the resolution. The hearing officer shall file the findings of fact and decision with the Director, DISCR, with a copy to the parties.

b. The Director, DISCR, shall forward to the Director, Section 6 Schools or the Military Department concerned and the Domestic Advisory Panel copies, with all personally identifiable information deleted, of the

hearing officer's findings of fact and decision or, in cases that are administratively appealed, of the final decision of the DISCR Appeal Board.

c. The hearing officer shall have the authority to impose financial responsibility for early intervention services, educational placements, evaluations, and related services under his or her findings of fact and decision.

d. The findings of fact and decision of the hearing officer shall become final unless a notice of appeal is filed under section F.1. of this appendix. The Section 6 School System or Military Department concerned shall implement a decision as soon as practicable after it becomes final.

E. Determination Without Hearing

1. At the request of a parent of the infant, toddler, preschool child or child when early intervention or special educational (including related) services are at issue, the requirement for a hearing may be waived, and the case may be submitted to the hearing officer on written documents filed by the parties. The hearing officer shall make findings of fact and issue a decision within the period fixed by paragraph D.1.n. of this appendix.

2. The Section 6 School System or Military Department concerned may oppose a request to waive the hearing. In that event, the hearing officer shall rule on the request.

3. Documents submitted to the hearing officer in a case determined without a hearing shall comply with paragraph D.1.g. of this appendix. A party submitting such documents shall provide copies to all other parties.

F. Appeal

1. A party may appeal the hearing officer's findings of fact and decision by filing a written notice of appeal with the Director, DISCR, within 5 calendar days of receipt of the findings of fact and decision. The notice of appeal must contain the appellant's certification that a copy of the notice of appeal has been provided to all other parties. Filing is complete upon mailing.

2. Within 10 calendar days of the filing of the notice of appeal, the appellant shall submit a written statement of issues and arguments to the Director, DISCR, with a copy to the other parties. The other parties shall submit a reply or replies to the Director, DISCR, within 15 calendar days of receiving the statement, and shall deliver a copy of each reply to the appellant. Submission is complete upon mailing.

3. The Director, DISCR, shall refer the matter on appeal to the DISCR Appeal Board. It shall determine the matter, including the making of interlocutory rulings, within 60 calendar days of receiving timely submitted replies under section F.2. of this Appendix. The DISCR Appeal Board may require oral argument at a time and place reasonably convenient to the parties.

4. The determination of the DISCR Appeal Board shall be a final administrative decision and shall be in written form. It shall address the issues presented and set forth a rationale for the decision reached. A determination denying the appeal of a parent in whole or in part shall state that the parent has the right

under Pub. L. 101-476, as amended, to bring a civil action on the matters in dispute in a district court of the United States without regard to the amount in controversy.

5. No provision of this part or other DoD guidance may be construed as conferring a further right of administrative review. A party must exhaust all administrative remedies afforded by this appendix before seeking judicial review of a determination made under this appendix.

G. Publication and Indexing of Final Decisions

The Director, DISCR, shall ensure that final decisions in cases arising under this appendix are published and indexed to protect the privacy rights of the parents who are parties in those cases and the children of such parents, in accordance with 32 CFR part 310.

Dated: September 30, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-24414 Filed 10-5-93; 8:45 am]

BILLING CODE 5000-04-M

32 CFR Part 86

[DoD Instruction 1402.5]

Criminal History Background Checks on Individuals in Child Care Services

AGENCY: Department of Defense.

ACTION: Interim final rule.

SUMMARY: This interim final rule is being issued to implement section 231 of the "Crime Control Act of 1990," Public Law 101-647, as amended by section 1094(a) of the "National Defense Authorization Act for Fiscal Years 1992 and 1993," Public Law 102-190 (codified at 42 U.S.C. 13041). This rule establishes policy and uniform procedures for conducting criminal history background checks of prescribed DoD personnel and applicants who are or, if hired, would be involved in a provision of child care services, pursuant to the statutory authorities cited above.

DATES: Effective January 19, 1993. Written comments must be received by November 5, 1993.

ADDRESSES: Forward comments to: Office of Family Policy, Support and Services, Office of the Assistant Secretary of Defense (Personnel and Readiness), 4015 Wilson Blvd., Ballston Center Tower 3, room 911, Attention: Dr. JanaLee L. Sponberg, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. JanaLee L. Sponberg, at telephone number (703)-696-4555.

SUPPLEMENTARY INFORMATION: This interim final rule is issued to comply

with a statutory requirement and to permit DoD Components to issue consistent implementing guidance. The Department of Defense invites public comments on this interim final rule. It shall consider those comments in deciding whether, and, if so, how to amend this rule.

Executive Order 12291, "Federal Regulation"

It is hereby determined that 32 CFR part 86 is not a major rule. The rule does not:

- (1) Have an annual effect on the economy of \$100 million or more;
- (2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- (3) Have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Public Law 96-354, "Regulatory Flexibility Act"

It is hereby certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because this guidance instructs the Department to conduct the required criminal history background checks for the small businesses. The primary effect on small businesses will be a reduction in administrative costs and other burdens resulting from the simplification and clarification of certain policies and at the elimination of policy differences among the Federal agencies promulgating this interim final rule.

Public Law 96-511, "Paperwork Reduction Act"

It is hereby certified that 32 CFR part 86 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

List of Subjects in 32 CFR Part 86

Child Care; Security.

Accordingly, title 32, subchapter B, is amended to add part 86 to read as follows:

PART 86—CRIMINAL HISTORY BACKGROUND CHECKS ON INDIVIDUALS IN CHILD CARE SERVICES

- Sec.
- 86.1 Purpose.
 - 86.2 Applicability.
 - 86.3 Definitions.
 - 86.4 Policy.
 - 86.5 Responsibilities.
 - 86.6 Procedures.

Appendix A to Part 86—Criminal History Background Check Procedures

Appendix B to Part 86—Criteria For Criminal History Background Check Disqualifications

Appendix C to Part 86—State Information Authority: 42 U.S.C. 13041.

§ 86.1 Purpose.

This part: (a) Implements Public Law 101-647, section 231 and Public Law 102-190, section 1094.

(b) Requires procedures for existing and newly hired individuals and includes a review of personnel and security records to include a Federal Bureau of Investigation (FBI) fingerprint check and State Criminal History Repositories (SCHR) checks of residences listed on employment or certification applications.

(c) Establishes policy, assigns responsibilities, and prescribes procedures for criminal history background checks for all existing and newly hired individuals involved in the provision of child care services as Federal employees, contractors, or in Federal facilities to children under the age of 18. The checks are required of all individuals in the Department of Defense involved in providing child care services defined in Public Law 101-647, and for policy reasons, those categories of individuals not expressly governed by the statute.

(d) Allows the Department to provisionally hire such individuals before the completion of a background check. However, at all times while children are in the care of that individual, the child care provider must be within sight and under the supervision of a staff person whose background check has been successfully completed. Healthcare personnel shall comply with guidance provided in the Memorandum from the Assistant Secretary of Defense for Health Affairs (ASD(HA))¹, April 20, 1992.

(e) Includes all individuals providing child care services to children in accordance with 32 CFR part 310, Federal Personnel Manual (FPM)², 32 CFR part 154, DoD Directive 6400.1³, DoD Instruction 6060.2⁴, DoD Instruction 6400.2⁵, DoD Directive 1400.13⁶, 32 CFR part 68, DoD Directive

6025.11⁷, DoD Directive 1015.1⁸, and 32 CFR part 212.

§ 86.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 86.3 Definitions.

Terms used in this part are defined as follows.

(a) Appropriated Fund (APF)

Employees. Personnel hired by DoD Components with appropriated funds as defined in the FPM, Chapter 731. This includes temporary employees, 18 years old or older, who work with children.

(b) *Care provider.* As defined in Public Law 101-647, section 231 and Public Law 102-190, section 1094. Providers included are current and prospective individuals hired with APF and nonappropriated funds (NAF) for education, treatment or healthcare, child care or youth activities, individuals employed under contract who work with children and those who are certified for care. Care providers are individuals working within programs that include alphabetically: Child Development Programs, DoD Dependents Schools, DoD-Operated or -Sponsored Activities, DoD Section 6 School Arrangements, Foster Care, Private Organizations on DoD Installations, and Youth Programs. Background checks are required for all civilian and military providers (except military health care providers) involved in child care services who have regular contact with children.

(c) *Child.* An unmarried person, whether natural child, adopted child, foster child, stepchild, or ward, who is a family member of a military member or DoD civilian or their spouse, and who is under the age of 18 years; or is incapable of self support because of a mental or physical incapacity and for whom treatment is authorized in a medical facility of the Military Services, as defined in DoD Directive 6400.1.

(d) *Child abuse and/or neglect.* The physical injury, sexual maltreatment, emotional maltreatment, deprivation of necessities, or other maltreatment of a child. The term encompasses both acts and omissions on the part of a

responsible person, as defined in DoD Directive 6400.1.

(e) *Child care services.* DoD personnel and contractors who are involved in any of the following: "Child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services," as defined in Public Law 101-647, section 231.

(f) Child Development Center (CDC).

An installation facility or part of a facility used for child care operated under the oversight of Component's Child Development Programs (CDPs) and as defined in DoD Instruction 6060.2.

(g) *Child Development Programs (CDPs).* Programs for dependents of DoD personnel provided in CDCs, family child care (FCC) homes, and alternative child care options. The care provided is on a full-day, part-day, or hourly basis. Care is designed to protect the health and safety of children and promote their physical, social, emotional, and intellectual development, as defined in DoD Instruction 6060.2.

(h) *Child sexual abuse.* Employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) or the rape, molestation, prostitution, or any other such form of sexual exploitation of children, or incest with children. All sexual activity between an offender and a child, when the offender is in a position of power over the child, is considered sexual maltreatment, as defined in DoD Instruction 6400.2.

(i) *Criminal history background check.* An investigation based on fingerprints and other identifying information obtained by a law enforcement officer conducted through the Federal Bureau of Investigation-Identification Division (FBI-ID) and SCHR of all States that an employee or prospective employee list as current and former residences on an employment application initiated through the personnel programs of the applicable Federal Agencies, as defined in Public Law 101-647 or through the personnel program of a given government contractor.

(j) *Defense Clearance and Investigations Index (DCII).* The central DoD record of investigative files and adjudicative actions such as clearances and access determinations, revocations,

¹ Copies may be obtained from OASD(HA) Room 3E346, The Pentagon, Washington, DC 220301-1200.

² Copies may be obtained from a Federal Depository Library, or a Federal Agency Personnel Office.

³ Copies may be obtained from the National Technical Information Service, 5285 Port Royal, Springfield, VA 22161.

⁴ See footnote 3 to § 86.1(e).

⁵ See footnote 3 to § 86.1(e).

⁶ See footnote 3 to § 86.1(e).

⁷ See footnote 3 to § 86.1(e).

⁸ See footnote 3 to § 86.1(e).

and denials concerning military, civilian, and contract personnel.

(k) *DoD Dependents Schools (DoDDS)*. Schools operated by the Department of Defense for minor dependents of military members or DoD civilians assigned to duty in foreign countries, as defined in DoD Directive 1400.13.

(l) *DoD-operated or -sponsored activity*. A contracted entity authorized by appropriate DoD officials to perform child care, education, treatment, or supervisory functions on DoD-controlled property. Examples include but are not limited to CDPs, FCC Programs, Medical Treatment Facilities, DoDDS, DoD Section 6 Schools, and Youth Programs.

(m) *DoD Section 6 Schools*. The educational arrangements made for the provision of education to eligible dependent children by the Department of Defense under Public Law 81-874, section 6, as defined in 32 CFR part 68, in the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(n) *Family Child Care (FCC)*. Quarters-based child care provided in Government-owned or -leased quarters, in which care is provided on a regular basis for compensation, usually for more than 10 hours a week per child, to one or more (up to six) children, including the provider's own children under 8 years of age, as defined in DoD Instruction 6060.2.

(o) *Foreign National Employees Overseas*. Non-U.S. citizens hired by the Department of Defense for employment on an overseas installation.

(p) *Foster care*. A voluntary or court-mandated program that provides 24-hour care and supportive services in a family home or group facility for children who cannot be properly cared for by their own family.

(q) *Government-contracted care providers*. An individual or a group of individuals hired under a Government contract to provide instruction, child care services, healthcare, or youth services. FCC providers are not considered contracted Government employees for this part.

(r) *Healthcare personnel*. Personnel involved in the delivery of healthcare to children under the age of 18 on a frequent and regular basis. See ASD(HA) memorandum dated April 20, 1992.

(1) *Medical and dental care staff*. Physicians, dentists, nurse practitioners, clinical social workers, clinical psychologists, physicians' assistants, physical therapists, and speech pathologists.

(2) *Clinical support staff*. Clinical providers not granted defined clinical privileges to include residents, registered nurses, licensed practical nurses, nursing assistants, play therapists, and technicians, and defined in DoD Directive 6025.11.

(s) *Installation Records Check (IRC)*. An investigation conducted through the records of all installations of an individual's identified residences for the preceding 2 years before the date of the application. This record check shall include, at a minimum, police (base and/or military police, security office, or criminal investigators or local law enforcement) local files check, Drug and Alcohol Program, Family Housing, Medical Treatment Facility for Family Advocacy Program to include Service Central Registry records and mental health records, and any other record checks as appropriate, to the extent permitted by law.

(t) *National Agency Check (NAC)*. As defined in 32 CFR part 154.

(u) *National Agency Check and Inquiries (NACI)*. As defined in the FPM, Chapters 731 and 736.

(v) *Nonappropriated Fund Instrumentalities (NAFI) Employees*. Personnel hired by the DoD Components, compensated from NAFI funds as defined in DoD Directive 1015.1. This includes temporary employees, 18 years old or older, who work with children.

(w) *Private Organizations on DoD Installations*. A nongovernmental entity authorized by the Department of Defense to perform child care services, education, or supervisory functions with children on DoD-controlled property, as defined in 32 CFR part 212. Examples include religious groups and associations, such as scouts.

(x) *Respite care*. Provides short-term child care and supportive services in a family home or group facility for children to relieve stress, prevent child abuse, and promote family unity for a parent, foster parent, guardian, or family member.

(y) *Regular contact*. Responsible for a child or with access to children on a frequent basis as defined by the Component.

(z) *Specified volunteer position*. A position, designated by the DoD Component Head or designee, such as installation commander, requiring an installation record check because of the nature of the volunteer work in child care services.

(aa) *State Criminal History Repository (SCHR)*. The State's central record of investigative files. State information, including addresses, phone numbers,

costs and remarks, is listed in appendix C to this part.

(bb) *Supervision*. Refers to having temporary responsibility for children in child care services, and temporary or permanent authority to exercise direction and control by an individual over an individual whose required background checks have been initiated but not completed.

(cc) *Temporary employees*. This category includes nonstatus appointments to a competitive service position for a specified period, not to exceed a year. This includes summer hires, student interns, and NAFI flexible category employees.

(dd) *Volunteer activities*. Activities where individuals offer assistance on an unpaid basis in child and youth programs or other activities on DoD installations. Examples include sports programs, religious programs, scouting programs, and preschools sponsored by private parent cooperatives or other associations conducted on the installation.

(ee) *Volunteers*. Individuals who offer program assistance on an unpaid basis.

(ff) *Youth programs*. DoD-sponsored activities, events, services, opportunities, information, and individual assistance responsive to the recreational, developmental, social, psychological, and cultural needs of eligible children and youth. Includes before and after school programs as well as holiday and summer camps.

§ 86.4 Policy.

It is Department of Defense policy to:

(a) Establish a standardized and comprehensive process for screening applicants for positions involving child care services on DoD installations and in DoD activities.

(b) Provide fair, impartial, and equitable treatment before an individual may be deemed suitable to serve as an employee, a certified care provider, a specified volunteer position, or as an individual employed under contract in activities covered by this part, 32 CFR part 310, Federal Personnel Manual (FPM), 32 CFR part 154, DoD Directive 6400.1, DoD Instruction 6060.2, DoD Instruction 6400.2, DoD Directive 1400.13, 32 CFR part 68, DoD Directive 6025.11, DoD Directive 1015.1, and 32 CFR part 212 by conducting a thorough review of all appropriate records as described in this part.

(c) Protect children by denying or removing from employment, contract, or volunteer status any applicant or current employee who is determined unsuitable to provide child care services because derogatory information is contained in a suitability investigation.

(d) Ensure that an individual is advised of proposed disciplinary action, decertification, or refusal to hire by the hiring authority or designee if disqualifying derogatory information is contained in a suitability investigation. The individual is given the opportunity to challenge the accuracy and completeness of reported information.

(e) Foster cooperation among the DoD Components, other Federal Agencies, State and county agencies, and other civilian authorities in conducting criminal history background checks.

§ 86.5 Responsibilities.

(a) The Assistant Secretary of Defense for Personnel and Readiness shall: (1) Develop policy for conducting criminal history background checks on individuals seeking positions involving child care services.

(2) Monitor compliance with this part.

(3) Coordinate oversight of criminal history background checks as specified under this part.

(b) The Heads of the DoD Components shall: (1) Develop procedures to ensure compliance with the requirements of this part, in accordance with appendix A to this part.

(2) Provide oversight of process and procedures to conduct criminal history background checks to include assignment of propensity.

(3) Provide technical support and resources as required.

(4) Coordinate participation of specific organizations within the DoD Component involved in the conduct of the checks.

(5) Ensure that applicants and employees are made aware of their rights under 32 CFR part 310 including the right to challenge accuracy of records.

(6) Maintain the records of all individuals hired, certified, or employed under contract for positions that involve child care services for 2 years following termination of their service.

(7) Establish a mechanism to evaluate all adverse information resulting from criminal history background checks, using the criteria in appendix B to this part. Final suitability decisions are made by the DoD Component Head or designee.

§ 86.6 Procedures.

The records of all existing employees and applicants for positions in child care services are reviewed by the Component designee according to the procedures prescribed in appendix A to this part.

Appendix A to Part 86—Criminal History Background Check Procedures

This appendix establishes the procedures for conducting criminal history background checks on existing and newly hired individuals required by Public Law 101-647, section 231 and Public Law 102-190, section 1094. Background checks are required for all civilian providers involved in child care services who have regular contact with children. The categories of providers include current and prospective individuals hired with APF and NAFI funds for education, treatment or healthcare, child care or youth activities, and individuals employed under contract involved in the provision of child care services. In addition to the mandates of Public Law 102-190, section 1094, the Department of Defense requires that military members (except healthcare personnel), foster or respite care providers, FCC providers and family members, and specified volunteers shall have checks specified in this part.

A. Conducting Checks

Component designees shall notify existing and newly hired individuals and contractors of the requirement for a review of personnel and security records to include an FBI fingerprint check and SCHR checks of residences listed on employment and security applications.

1. *Fingerprint Check.* Law enforcement personnel shall forward completed forms through channels to the Office of Personnel Management (OPM) or Defense Investigative Service (DIS) for processing of FBI fingerprint forms.

2. *State Criminal History Repository (SCHR) Check.* DoD Installation-level personnel offices, in collaboration with law enforcement and security personnel, shall process State criminal history background checks for employment and shall ordinarily communicate in writing with each State identified in appendix B to part 86, providing full identifying information on each applicant and request confirmation that the individual has not been convicted in that State of a sex crime, an offense involving a child victim, a drug felony, or a violent crime. The DoD Component Heads may establish alternate procedures for conducting SCHR checks; e.g., a computerized, written, or telephonic check. The DoD Components are not required to wait longer than 60 days from the date of the request for a response from the SCHR personnel before taking action on a particular application. Authorities will depend on FBI fingerprint check validation if States do not respond.

3. *Installation Record Checks (IRC).* Consists of a local record check on an individual for a minimum of 2 years before the date of the application. This record check shall include, at a minimum, police (base and/or military police, security office, criminal investigators, or local law enforcement) local files checks, Drug and Alcohol Program, Family Housing, Medical Treatment Facility for Family Advocacy Program Service Central Registry records and mental health records, and any other record checks as appropriate to the extent permitted by law. A Service DCII may be conducted. The IRC shall be conducted by DoD Component personnel at the installation

level. An IRC will be completed on individuals with a DoD affiliation such as living or working on an installation or is active duty member or family member. Individuals without DoD affiliation have no installation system of records to check and an IRC is not completed. Upon favorable completion of the IRC, an individual may be selected and provide child care services under line of sight supervision until the required background checks are completed.

B. Applicants

1. Appropriated Fund (APF) Applicants

a. Except as otherwise provided in this subsection, the DoD Components shall process APF applicants using currently established procedures for completing background checks described in 32 CFR part 310. APF applicants must complete a SF-171, "Application for Federal Employment," and attach an SF-87, "Fingerprint Chart," completed by a law enforcement officer; and an SF-85P, "Questionnaire for Public Trust Positions" (Annotate Block "B" with code 03), for conduct of a NACI. The package shall be forwarded to the OPM.

b. The DoD Components shall assign responsibility for conducting the criminal history background checks through the SCHR to personnel offices working with law enforcement or investigative agencies. They shall conduct checks in all States that an employee or prospective employee lists as current and former residences in an employment or security application. It is deemed unnecessary to conduct checks before 18 years of age because juvenile records are unavailable. If no response is received from the State(s) within 60 days, determinations based upon the FBI report may be made. Responses received after this determination has been made must be provided to the determining authority.

c. Under Public Law 102-190, section 1094, the DoD Components may employ an individual pending completion of successful background checks described in Public Law 101-647, section 231. If an individual is so employed, at all times while children are in the care of that individual, he or she must be within sight and under the supervision of an individual whose background checks have been completed, with no derogatory reports.

d. Once it is clear that no derogatory information exists, line of sight supervision is terminated by the designee. If a derogatory report exists, Component personnel procedures shall prescribe appropriate action consistent with the criteria contained in this part.

2. Nonappropriated Fund Instrumentalities (NAFI) Applicants

a. Except as otherwise provided in this subsection, the DoD Components shall process NAFI applicants following established procedures for completing background checks. NAFI applicants must complete a DD Form 398-2 "Department of Defense National Agency Questionnaire," with reason for request identified as OTHER and annotated as CHILD CARE, and FD Form 258, "FBI Applicant Fingerprint Card." Fingerprints shall be taken by the local law enforcement organization personnel and

together with the DD Form 398-2 shall be forwarded to: Defense Investigative Service, Personnel Investigations Center, P.O. Box 1083, Baltimore, MD 21203-1083.

b. The DoD Components shall follow the procedures in the FPM, Chapter 731 and 736 and in paragraph B.1.b., c., and d. of this appendix to obtain fingerprints for the FBI, conduct criminal history background checks through the SCHR, and maintain employment of individuals pending the successful completion of the background checks.

3. Foreign National Employees Overseas

Foreign national employees overseas, while not expressly included within the law, are subject to the following record checks or those equivalent in scope to checks conducted on U.S. citizens:

a. Host-government law enforcement and security agency checks at the city, State (province), and national level, whenever permissible by the laws of the host government.

b. Defense Central Investigative Index (DCII).

c. FBI checks (when information exists regarding residence by the individual in the United States for 1 year or more since age 18).

d. When permissible by the laws of the host government, host-government checks are requested directly by the employing Service or agency. As an alternative, the DoD Components may request that overseas Military Service investigative elements obtain appropriate host-government checks. Where host-nations' arrangements preclude comparable criminal history checks, foreign nationals will not be eligible for employment in child care services.

4. Temporary Employees

This category includes summer hires, student interns, and NAFI flexible category employees. Background checks for these individuals are processed according to funding source; i.e., for APF employees (to OPM) or NAFI employees (to DIS). Installation designated points of contact shall notify applicants of report disposition.

5. Healthcare Personnel

This category includes civilian personnel involved in the delivery of healthcare. Within the context of such medical care, line of sight supervision must be viewed through the prism of existing medical quality assurance, clinical privileging, and licensure directives, which require pre-employment screens, enhanced surveillance of new employees, and ongoing monitoring of the performance of all healthcare providers. These programs are inherent to both quality medical care and patient safety and are adequate and equivalent mechanisms for the sight and supervision requirements in paragraph B.1.c. and d. of this appendix. It should be noted that these quality assurance programs are not sufficient in and of themselves under Public Law 101-647, section 231. Therefore, the required FBI fingerprint check and the SCHR check must be completed as expeditiously as possible.

C. Current Employees

All currently employed individuals covered by this part shall have the FBI fingerprint and criminal history background check as described in Public Law 101-647, section 231. If the results of such checks, to include the SCHR, cannot be confirmed through an examination of available local records, action shall be initiated in accordance with paragraph B.1. of this appendix for APF employees and paragraph B.2. of this appendix for NAFI employees, and with paragraph D. of this appendix for individuals employed under contract. The SCHR checks are conducted in all cases in accordance with paragraph A.2. of this appendix. For the purposes of this part, no IRC is required for individuals employed before June 1991.

D. Government Contract Employees

1. Sponsoring activities are responsible for ensuring that the requirements in this part are included in the statement of work for all child care programs to be contracted. The contracting officer is responsible for performing any action necessary to verify that services provided by the contractor conform to contract quality requirements. Component designees for requiring activities shall ensure that the statement of work, at a minimum:

a. States that the contractor must ensure its employees have proper criminal history background checks as outlined in this part.

b. States that actual checks are performed by the Government.

c. Includes procedures that the contractor must follow to obtain checks for its employees; for example, identify the office where employees report for processing, identify proper forms to be completed, etc. Also, identify the DoD Component for billing purposes, and identify the appropriate security point of contact or installation commander as the authorized recipient of background check results.

d. States that employees may be permitted to work before completion of background checks, provided the employee is within sight of an individual who has successfully completed a background check.

e. States that employees have the right to obtain a copy of the background check report, whom they should contact for the copy and whom to contact for procedures to challenge the accuracy and completeness of the information in the report.

f. Requires that contractor employees who have previously received a background check must provide proof of the check or obtain a new one.

2. Requirements for child care services must be submitted to the contracting officer sufficiently in advance of the required performance start date to provide time for obtaining background checks. Sponsoring activities' designees shall coordinate with the contracting officer as soon as possible after a requirement for child care services becomes known.

3. Procedures for obtaining responses for background checks are the same as those for NAFI employees and response to derogatory information will occur through the appropriate designee and contractor. An IRC

will be performed if the individual is a military member or family member, or has worked or lived on a military installation within 5 years.

E. Other Providers

Criminal history background checks with the FBI and the States are not required. Duplication of previous background checks are not required for personnel where official records demonstrate that an adequate check has already been conducted. This category includes the following:

1. *Military Members.* These are active duty individuals (other than healthcare personnel) who seek to provide child care services as part of a normal duty assignment or are involved during off-duty hours. For these members an IRC and a current security clearance meet the requirements of this part. In the absence of a current security clearance, a name check of the DCII must be conducted. When military members are employed in an APF or a NAFI position they will abide by background check requirements listed in paragraphs B.1. and B.2. of this appendix.

2. *Foster and Respite Care Providers and Family Members.* These are individuals who seek to provide foster care or respite child care within Government-owned or -leased quarters. The care provider, all other adults, and each child, age 12 and older, residing within the applicant's household must receive an IRC. In addition, the Component designee must also obtain a name check of the DCII on all adults.

3. *FCC Providers and Family Members.* These are individuals who seek licensing to provide child care within government-owned or -leased quarters. The care provider, all other adults, and each child, age 12 and older, residing within the applicant's household receive an IRC. In addition, the Component designee must obtain a name check of the DCII on all adults.

4. *Specified Volunteers.* Installation commanders shall designate those positions that are determined to be "specified." Individuals working in specified volunteer positions will have an IRC check because of the nature of their work in child care services. The opportunity for contact may be extensive, frequent, or over a period of time. They include, but are not limited to, positions involving extensive interaction alone, extended travel, and/or overnight activities with children. An IRC is required for volunteers who are active-duty, a family member, or a DoD civilian overseas. A volunteer is allowed to work upon completion of a favorable IRC. Background checks are not required for volunteers whose services will be of shorter duration than is required to perform the background checks and who are under line of sight supervision by an individual who has successfully completed a background check. The Components are required to provide additional implementing guidance.

F. Employment Application Requirement

Public Law 101-647, section 231 requires that each application for employment shall include a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and

if so, requires a description of the disposition of the arrest or charge. The forms identified in paragraphs B.1.a. and B.2.a. of this appendix are signed by the applicant under penalty of perjury, with the applicable Federal punishment for perjury stated on the respective forms.

1. An applicant's signature indicates an understanding of the employer's obligation to require a record check as a condition of employment. Information on background checks shall be maintained in accordance with applicable Component implementing regulations.

2. Payment for the conduct of any criminal history background check is the responsibility of the requesting Service or agency.

3. The results of the background check are forwarded to the Component designee at the sending installation for appropriate action. A derogatory report would include, but not be limited to, the following applicable crimes: Any charge or conviction for a sex crime, an offense involving a child victim, a substance abuse felony, or a violent crime.

4. The hiring authority or designee is responsible for notifying the individual of a derogatory report. The individual may obtain a copy of the criminal history report and has the right to challenge the accuracy and completeness of any information contained in the report through the Privacy Program described in 32 CFR part 310. The individual may provide information concerning positive mitigating factors for any adverse information presented.

5. Employees whose criminal history background checks result in nonselection for employment or service shall be informed by the Component designee of the right to an administrative appeal under 32 CFR part 310. The individual may appeal with a specific request such as amendments to the records or request to file statement disagreeing with information in the record. If the employee's request for record information is refused, the individual is informed of his or her right to an administrative appeal. As appropriate, Component designees shall inform individuals of other avenues available to resolve matters of concern such as an administrative or negotiated grievance procedures. If the employee remains dissatisfied, he or she may seek a review. The Department of Defense recognizes the privacy interests and rights of all applicants and employees, and its own responsibility in ensuring a safe and secure environment for children within DoD activities or private organizations on DoD installations.

G. Record Re-Verification

This procedure consists of an IRC and a DCII name check and is required by the Component designee at a minimum every 5 years for all employees providing child care services and covers the time period since the completion of the last background check. NAFI employees who change duty stations will complete a new investigation when considered for employment. A new investigation is required by the Department of Defense if a break in service results in a time-lapse of more than 2 years. FCC, foster care and respite care providers, and their

family members will complete an IRC annually.

H. Supervision

Refers to temporary responsibility for children in child care services, and relates to oversight for temporary or permanent authority to exercise direction and control by an individual over an individual whose required background checks have been initiated but not completed. Use of video equipment is acceptable provided it is monitored by an individual who has successfully completed a background check. Supervision procedures pending completion of background checks for healthcare personnel suggest that the Surgeons General shall require close clinical supervision and full compliance with existing DoD Directives, Instructions, and other guidance (issued by the Department of Defense and the Military Department concerned) on quality assurance, risk management, licensure, employee orientation, and credentials certification. These policies rely on process and judgment, and meet the intent of the "direct sight supervision" provision, affording local commanders a flexible and reasonable alternative.

- I. Programs. Requirements cover all DoD-operated activities and private organizations on DoD installations and include, but are not limited to:
 1. Child Development Programs.
 - a. Child development centers, part-day preschools, and enrichment programs.
 - b. Family child care.
 - c. Contracted Services, whether personal or non-personal services.
 2. Youth Programs.
 3. Dependents Schools operated by the Department of Defense.
 4. Medical treatment facilities.
 5. Other contracted services.
 6. Private organizations on DoD installations.
 7. Volunteer activities.

J. Background Check Matrix

This identifies the requirements of this part for background checks by category of personnel. These checks are initiated through the personnel offices in collaboration with law enforcement and security personnel. (Reminder: An IRC may only be completed on an individual who is a military member or family member, or who lives or works on a military installation.)

1. Appropriated Fund (APF) Employees. FBI, SCHR, and IRC. (SF-171, SF-87, and SF-85P).
2. Non-appropriated Fund Instrumentalities (NAFI) Employees. FBI, SCHR, and IRC. (DD Form 398-2 and FD Form 258).
3. Foreign National Employees Overseas. IRC and local government check.
4. Temporary Employees. FBI, SCHR, and IRC.
5. Current Employees. FBI and SCHR.
6. Government Contract Employees. FBI, SCHR, and IRC.
7. Other Providers.
 - a. Military Members. Military members will have an IRC and, if no current security clearance exists, a name check of the DCII.

Checks are not required for military healthcare personnel.

b. Foster and Respite Care Providers and Family Members (age 12 and older). IRC and Service DCII (for adults).

c. Family Child Care Providers and Family Members (age 12 and older). IRC and Service DCII (for adults).

d. Specified Volunteers. IRC.

Appendix B to Part 86—Criteria For Criminal History Background Check Disqualification

The ultimate decision to determine how to use information obtained from the criminal history background checks in selection for positions involving the care, treatment, supervision, or education of children must incorporate a common sense decision based upon all known facts. Adverse information is evaluated by the DoD Component Head or designee who is qualified at the appropriate level of command in interpreting criminal history background checks. All information of record both favorable and unfavorable will be assessed in terms of its relevance, recency, and seriousness. Likewise, positive mitigating factors should be considered. Final suitability decisions shall be made by that commander or designee. Criteria that will result in disqualification of an applicant require careful screening of the data and include, but are not limited to, the following:

A. Mandatory Disqualifying Criteria

Any conviction for a sexual offense, a drug felony, a violent crime, or a criminal offense involving a child or children.

B. Discretionary Criteria

1. Acts that may tend to indicate poor judgment, unreliability, or untrustworthiness in working with children.
2. Any behavior; illness; or mental, physical, or emotional condition that in the opinion of a competent medical authority may cause a defect in judgment or reliability.
3. Offenses involving assault, battery, or other abuse of a victim, regardless of age of the victim.
4. Evidence or documentation of substance abuse dependency.
5. Illegal or improper use, possession, or addiction to any controlled or psychoactive substances, narcotic, cannabis, or other dangerous drug.
6. Sexual acts, conduct, or behavior that, because of the circumstances in which they occur, may indicate untrustworthiness, unreliability, lack of judgment, or irresponsibility in working with children.
7. A wide range of offenses such as arson, homicide, robbery, fraud, or any offense involving possession or use of a firearm.
8. Evidence that the individual is a fugitive from justice.
9. Evidence that the individual is an illegal alien who is not entitled to accept gainful employment for a position.
10. A finding of negligence in a mishap causing death or serious injury to a child or dependent person entrusted to their care.

C. Suitability Considerations

In making a determination of suitability, the evaluator shall consider the following

additional factors to the extent that these examples are considered pertinent to the individual case:

1. The kind of position for which the individual is applying or employed.
2. The nature and seriousness of the conduct.
3. The recentness of the conduct.
4. The age of the individual at the time of the conduct.
5. The circumstances surrounding the conduct.
6. Contributing social or environmental conditions.
7. The absence or presence of rehabilitation or efforts toward rehabilitation.
8. The nexus of the arrests in regard to the job to be performed.

D. Questions

1. All applications, for each of the categories of individuals identified in § 86.3,

will include the following questions: "Have you ever been arrested for or charged with a crime involving a child? Have you ever been asked to resign because of or been decertified for a sexual offense? And, if so, 'provide a description of the case disposition.' For FCC, foster care, and respite care providers, this question is asked of the applicant regarding all adults, and all children 12 years and older, who reside in the household.

2. All applications shall state that the form is being signed under penalty of perjury. In addition, a false statement rendered by an employee may result in adverse action up to and including removal from Federal service.

3. Evaluation of criminal history background checks is made and monitored by qualified personnel at the appropriate level designated by the Component. Final suitability decisions are made by the designee.

Appendix C to Part 96—State Information

All SCHR checks should be accompanied by the following: 1. State form, if required. If no State form is required, the request should be on letterhead, beginning with the statement that the check is in accordance with Public Law 101-647. The request must include full identifying information, such as: Name, date of birth, social security number, complete addresses, etc.

2. Fingerprint set if required. Some State laws require a fingerprint set either on a State form or forms used by the agency.

3. Release statement signed by the applicant or employee. If required by the State, the release must be notarized.

4. Payment for the SCHR check.

5. Self-addressed, stamped envelope.

The following is an updated listing of State addresses, fees, and other information:

Address	Fee	Remarks
State of Alabama, Alabama Dept. of Public Safety, Attn: ABI Division, 5002 Washington Ave., Montgomery, AL 36130.	\$25	Name check, COMM: 205-242-4372.
State of Alaska, Alaska Dept. of Public Safety, Information Systems Section, 5700 Tudor Road, Anchorage, AK 99507.	20	Fingerprints required, reason for request required (comply with Pub. L.), name and address authorized request and receive SCHRC, COMM: 907-269-5511.
State of Arizona, Arizona Criminal Justice, Dept. of Public Safety, Information Systems Division, PO Box 6638, Phoenix, AZ 80550.	No check ...	Limited release, call/write, write for information. COMM: 602-223-2229.
State of Arkansas, Arkansas State Police, PO Box 5901, Little Rock, AR 72215.	No fee	Name check, written consent required, COMM: 501-221-8233.
State of California, Dept. of Justice, Bureau of Criminal Justice, Identification and Information Bureau, PO Box 903417, Sacramento, CA 94203-4170.	27	Fingerprints required, COMM: 916-739-2786.
State of Colorado, Crime Information Center, Colorado Bureau of Investigation, 690 Kipling Street, #3000, Lakewood, CO 80215.	4.50	Write/call for form, name check, COMM: 303-239-4222/4229.
State of Connecticut, Dept. of State Police, Bureau of Investigation, Building 4, 294 Colony Street, Meriden, CT 06450.	No fee	Name check, written consent required, copy of Pub. L. required, COMM: 203-238-6155.
State of Delaware, Delaware State Police-SBI, State Bureau of Investigation, PO Box 430, Dover, DE 19903.	25	Fingerprints required, COMM: 302-739-5871.
Washington, DC, Identification and Records Division, Metropolitan Police Dept., Room 2076, 300 Indiana Avenue, NW., Washington, DC 20001.	No fee	Name check, written request required, COMM: 202-727-4245.
State of Florida, Florida Dept. of Law Enforcement, PO Box 1489, Tallahassee, FL 32302.	10	Name check, check to: Dept. of Law Enforcement, COMM: 904-488-6236.
State of Georgia, Georgia Criminal Information Center, PO Box 370748, Decatur, GA 30037-0748.	15	Write or call for form, notary and fingerprints required, COMM: 404-244-2644.
State of Hawaii, Criminal Justice Data Center, 465 South King Street, Room 101, Honolulu, HI 96813.	No fee	Name check, COMM: 808-587-3100.
State of Idaho, Idaho Dept. of Law Enforcement, Criminal Identification Bureau, 6064 Corporal Lane, Boise, ID 83704.	5	Name check, written consent required, payment to: Dept. of Law Enforcement, COMM: 208-327-7130.
State of Illinois, Bureau of Identification, 260 North Chicago Street, Joliet, IL 60431-1060.	14	Write or call for form, name check, COMM: 815-740-5184.
State of Indiana, Indiana State Police, 100 North Senate Avenue, Room 312, Indianapolis, IN 46204.	7	Write or call for form, name check, COMM: 317-232-8266.
State of Iowa, Commissioner Paul H. Wiecek II, Iowa Dept. of Public Safety, Wallace State Office Building, Des Moines, IA 50319.	6	Release within State, COMM: 515-281-5138.
State of Kansas, Kansas Bureau of Investigation, 1620 Southwest Tyler, Topeka, KS 66612.	10	Write or call for form, name check, \$5 per name, over two names, COMM: 913-232-6000.
State of Kentucky, Kentucky State Police Records, State Office Building, 1250 Louisville Road, Frankfort, KY 40601.	4	Write or call for form, name check, COMM: 502-227-8700x214.
State of Louisiana, Louisiana State Police, Department of Public Safety, PO Box 66614, Baton Rouge, LA 70896.	13	Write or call for form, fingerprints required, COMM: 502-925-6095.
State of Maine, State Bureau of Investigation, Department of Public Safety, Maine State Police, 36 Hospital Street, Augusta, ME 04333.	No fee	Name check, reason for check required; i.e., comply with Pub. L., COMM: 207-624-7009.
State of Maryland, Criminal Justice Information Service, Central Repository, Building G4, 1201 Reisterstown Road, Pikesville, MD 21208.	18	Write or call for form, name check, COMM: 410-764-4501.
State of Massachusetts, Executive Office of Public Safety, Criminal History Systems Board, 1010 Commonwealth Avenue, Boston, MA 02215.	No fee	Write or call for form, name check, COMM: 617-727-0090x12.
State of Michigan, Michigan State Police, FOI Unit, 7150 Harris Drive, Lansing, MI 48913.	No check ...	No release, COMM: 517-322-5531.

Address	Fee	Remarks
State of Minnesota, Criminal Justice Information Systems, Bureau of Criminal Apprehension, Minnesota Dept. of Public Safety, 1246 University Avenue, St. Paul, MN 55104.	8	Name check, written consent required, COMM: 612-642-0670.
State of Mississippi, Department of Public Safety, ATTN: Identification Bureau, PO Box 958, Jackson, MS 39225.	No fee	Write or call for form, name check, COMM: 607-987-1212.
State of Missouri, Criminal Records Division, State Highway Patrol, Department of Public Safety, PO Box 568, Jefferson City, MO 65102.	5	Write or call for form, name check COMM: 314-751-3313.
State of Montana, Identification Bureau, Department of Justice, 303 North Roberts, Helena, MT 59620-1418.	5	Name check, COMM: 406-444-3625.
State of Nebraska, Nebraska State Patrol, PO Box 94907, State House Station, ATTN: CID, Lincoln, NE 68509-4907.	10	Name check, COMM: 402-471-4545.
State of Nevada, Nevada Highway Patrol, 555 Wright Way, Carson City, NV 89711.	15	Write or call for form, fingerprints required, COMM: 702-687-5300.
State of New Hampshire, New Hampshire State Policy HQ, Criminal Records, 10 Hazen Drive, Concord, NH 03305.	10	Write or call for form, name check, COMM: 603-271-2538.
State of New Jersey, Division of State Police, Records and ID Section, PO Box 7068, West Trenton, NJ 08625-0068.	12	Copy of Pub. L. required, name check, COMM: 609-882-2000.
State of New Mexico, Department of Public Safety, Records Bureau, PO Box 1628, Santa Fe, NM 87504-1628.	5	Write or call for form, name check, notary required, COMM: 505-827-9181.
State of New York, Division of Criminal Justice Services, Executive Park Tower, Stuyvesant Plaza, Albany, NY 12203.	No check ...	No release at current time, state requires an agreement with agency to process, COMM: 518-485-7685.
State of North Carolina, Division of Criminal Information, Bureau of Investigation, 407 North Blount Street, Raleigh, NC 27601-1009.	14	Fingerprint form required, copy of Pub. L. required, call/write for form, COMM: 919-662-4500.
State of North Dakota, Bureau of Criminal Information, PO Box 1054, Bismark, ND 58502.	20	Name check, written consent required, COMM: 702-221-6180.
State of Ohio, Bureau of Criminal Information, PO Box 365, London, OH 43140.	15	Write or call for form, written consent required, fingerprints required, COMM: 614-852-2556.
State of Oklahoma, Oklahoma Law Enforcement, Criminal History Information, ATTN: Criminal History, PO 11497, Oklahoma City, OK 73136.	10	Write or call for form, name check, COMM: 405-848-6724.
State of Oregon, Criminal ID, State Police, 155 Cottage Street, NE, Salem, OR 97310.	10	Name check, COMM: 503-378-3070.
State of Pennsylvania, Records and ID Division, Pennsylvania State Police, Dept. HQ, 1800 Elmerton Avenue, Harrisburg, PA 17110.	10	Write or call for form, name check, 10 COMM: 717-783-5592.
State of Rhode Island, Rhode Island State Police, PO Box 185, North Scituate, RI 02857.	No fee	Name check, written consent required, COMM: 401-647-3311.
State of South Carolina, State Law Enforcement Division, ATTN: Criminal Records, PO Box 21398, Columbia, SC 29221-1398.	10	Name check, COMM: 803-737-4205, DSN: 734-1110.
State of South Dakota, Division Criminal Investigation, Attorney General's Office, East Highway 34, Pierre, SD 57501-5070.	15	Write or call for form, fingerprints required, COMM: 605-773-3334.
State of Tennessee, Tennessee Criminal Information Center, Tennessee Bureau of Investigation, PO Box 100940, Nashville, TN 37210.	23	Write or call for form, fingerprints required, COMM: 615-741-3241.
State of Texas, Texas Crime Records Division, Texas Dept. of Public Safety, PO Box 15999, Austin, TX 78761-5999.	15	Fingerprints required, written consent required, COMM: 512-465-2079.
State of Utah, Bureau of Criminal Identification, Utah Dept. of Public Safety, 4501 South 2700 West, Salt Lake City, UT 84119.	No fee	Write or call for form, name check, copy of law required, COMM: 801-965-4571.
State of Vermont, Vermont Criminal Information Center, Dept. of Public Safety, PO Box 189, Waterbury, VT 05676.	No fee	Name check, written consent required, COMM: 802-244-8786.
Commonwealth of Virginia, Virginia Records Management Div., Dept. of State Police, PO Box 850761, Richmond, VA 23261-5076.	10	Write or call for form, name check, COMM: 804-674-2024.
State of Washington, Washington, State Patrol, Identification Section, PO Box 42633, Olympia, WA 98504-2633.	10	Write or call for form, name check, COMM: 206-753-0230/7272.
West Virginia State Police, Dept. of Public Safety, 725 Jefferson Road, South Charleston, WV 25309.	5	Write or call for form, name check, COMM: 304-746-2180.
State of Wisconsin, Crime Information Bureau, Dept. of Justice, ATTN: Records Data Unit, PO Box 2718, Madison, WI 53701-2718.	2	Write or call for form, name check, COMM: 608-266-7314.
State of Wyoming, Division of Criminal Investigation, 316 West 22nd Street, Cheyenne, WY 82002.	15	Write or call for form, fingerprints required, written consent required, COMM: 307-777-7181.

Dated: October 1, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 93-24503 Filed 10-5-93; 8:45 am]

BILLING CODE 5000-04-M

**DEPARTMENT OF VETERANS
AFFAIRS****38 CFR Parts 3 and 4**

RIN 2900-AG10

Zero Percent Disability Evaluations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations and its schedule for rating disabilities to authorize the assignment of a zero percent evaluation for any disability in the rating schedule when minimum requirements for compensable evaluation are not met. This amendment is intended to clarify the VA's

interpretation of the intent of the regulation.

EFFECTIVE DATE: October 6, 1993.

FOR FURTHER INFORMATION CONTACT:

John L. Roberts, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 17, 1993, at pages 28808 through 28809, VA published a proposed rule to authorize the assignment of a zero percent evaluation for any disability in the rating schedule when minimum requirements for compensable evaluation are not met. Interested parties were invited to submit written comments on or before June 16, 1993. Since no comments were received, the final rule is adopted as proposed.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

- (1) It will not have an annual impact on the economy of \$100 million or more.
- (2) It will not cause a major increase in costs or prices.
- (3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: August 26, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 3 and 4 are amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.357 is revised to read as follows:

§ 3.357 Civil service preference ratings.

For the purpose of certifying civil service disability preference only, a service-connected disability may be assigned an evaluation of "less than ten percent." Any directly or presumptively service-connected disease or injury which exhibits some extent of actual impairment may be held to exist at the level of less than ten percent. For disabilities incurred in combat, however, no actual impairment is required.

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart A—General Policy in Rating

3. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

4. Section 4.31 is revised to read as follows:

§ 4.31 Zero percent evaluations.

In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met.

[FR Doc. 93-24376 Filed 10-5-93; 8:45 am]

BILLING CODE 3320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-4785-1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the LaBounty Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region VII announces the deletion of the LaBounty site from the National Priorities List (NPL). The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. The reason this action is being taken is that Superfund Remedial Activities have been completed. EPA and the State of Iowa have determined that no further cleanup by the Responsible Party is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the site to date have been protective of public health, welfare and the environment.

EFFECTIVE DATE: October 6, 1993.

FOR FURTHER INFORMATION CONTACT: Paul W. Roerman, Remedial Project Manager, Superfund Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Ave., Kansas City, KS 66101, (913) 551-7694.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the LaBounty Site, Charles City, Floyd County, Iowa.

A notice of intent to delete for this site was published August 10, 1993 (58 FR 42519). The closing date for comments was thirty (30) days after the notice was published. EPA did not receive any comments on the proposed deletion.

Based upon a review of monitoring data from the site, EPA in consultation with the State of Iowa has determined that the site does not pose a significant risk to human health or the environment. The contaminant levels in the Cedar River have been reduced below the levels set by the State of Iowa. The site shall be monitored by the Responsible Party in accordance with the Operation and Monitoring Plan approved by EPA.

Future reviews of monitoring data will be conducted, in conjunction with the State of Iowa, at a minimum of every five years, or until such time when no hazardous substances, pollutants or contaminants remain at the site above levels that allow for unrestricted use and unlimited exposure.

The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by

the Hazardous Substance Response Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions if conditions at the site warrant such action. Deletion from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Environmental protection, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

William W. Rice,

Acting Regional Administrator.

For the reasons set out in the preamble 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site "LaBounty Dump, Charles City, Iowa" and revising the total number of sites from 1,078 to read 1,077.

[FR Doc. 93-24535 Filed 10-5-93; 8:45 am]

BILLING CODE 5560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7585]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds

that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Federal Insurance Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Impact Analysis. This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New eligibles—Emergency Program: Illinois: Gorham, Village of Jackson County	170954	August 2, 1993	January 26, 1979.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Jackson County Unincorporated Areas	170927	August 4, 1993	August 8, 1980.
Tennessee: Pittman Center, Town of Sevier County	470378	August 24, 1993	December 7, 1979
Iowa: Moorland, City of Webster County	190784	August 20, 1993	October 29, 1976.
Georgia: Jasper, City of Pickens County	130375	August 27, 1993	April 11, 1975.
New Hampshire: Errol, Town of Coos County	330206	August 31, 1993	January 17, 1975.
New eligible—Regular Program:			
Iowa: Pottawattamie County Unincorporated Areas	190232	August 3, 1993	April 4, 1983.
South Carolina: Bluffton, Town of Beaufort County	450251	August 24, 1993	December 18, 1986.
Missouri: Grand Falls Plaza, Town of Newton County ¹	290904	August 26, 1993	—
Oklahoma: Lahoma, Town of Garfield County	400294	August 27, 1993	September 27, 1991.
Reinstatement—Regular Program:			
Nebraska: Avoca, Village of Cass and Otoe Counties	310247	Aug. 3, 1979—Emerg.; Aug. 3, 1979—Reg.; May 17, 1989— Susp.; August 20, 1993—Rein.	September 18, 1986.
West Virginia: Jefferson County Unincorporated Areas	540065	December 15, 1975— Emerg.; October 15, 1980—Reg.; October 15, 1980—Susp.; Oc- tober 24, 1980— Rein.; August 2, 1993—Susp.; August 30, 1993—Rein.	August 2, 1993.
Withdrawal—Regular Program:			
Minnesota: Lake Shore, City of Cass County	270062	November 11, 1976— Emerg. June 22, 1984—Reg.; August 3, 1993—With..	—
Regular Program Conversions			
Region I			
Vermont: Jericho, Town of Chittenden County	500037	August 2, 1993, Sus- pension Withdrawn..	August 2, 1993.
Region II			
New York:			
Gates, Town of Monroe County	360416	.....do	August 2, 1993.
Middletown, Town of Delaware County	360209	.....do	August 2, 1993.
Watertown, City of Jefferson County	360354	.....do	August 2, 1993.
Watertown, Town of Jefferson County	360355	.....do	August 2, 1993.
Region III			
Pennsylvania:			
Bethlehem, Township of Northampton County	420980	.....do	August 2, 1993.
Delaware, Township of Northumberland County	421010	.....do	August 2, 1993.
Swatara, Township of Dauphin County	420398	.....do	August 2, 1993.
Region V			
Minnesota: Chisago County Unincorporated Areas	270682	.....do	August 2, 1993.
Region VI			
Oklahoma: Lindsay, City of Garvin County	400245	.....do	August 2, 1993.
Region I			
Connecticut: Berlin, Town of Hartford County	090022	August 16, 1993, Sus- pension Withdrawn..	May 3, 1993.
Maine:			
Glenburn, Town of Penobscot County	230106	.....do	August 16, 1993.
Guilford, Town of Piscataquis County	230117	.....do	August 16, 1993.
Region III			
Pennsylvania: Washington, Township of Westmoreland County	422196	.....do	August 16, 1993.
Region V			
Wisconsin: Eau Claire County Unincorporated Areas	555552	.....do	August 16, 1993.
Indiana:			
Brook, Town of Newton County	180180	.....do	August 16, 1993.
Hamlet, Town of Starke County	180241	.....do	August 16, 1993.
Hamilton, Town of Steuben County	180080	.....do	August 16, 1993.
Remington, Town of Jasper County	180101	.....do	August 16, 1993.

¹ The Town of Grand Falls Plaza has adopted Newton County's Flood Insurance Study dated April 17, 1985, with accompanying Flood Insurance Rate Map for flood insurance purposes.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: September 28, 1993.

Donald L. Collins,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 93-24538 Filed 10-5-93; 8:45 am]

BILLING CODE 6718-21-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[FCC 93-184]

Metric Conversion

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule (FCC 93-184), that was published Wednesday, August 25, 1993 (58 FR 44892). This rule related to the metric conversion of Federal Communications Commission regulations.

EFFECTIVE DATE: September 24, 1993.

FOR FURTHER INFORMATION CONTACT:

David Wilson, Office of Engineering and Technology, (202) 653-8138.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction was released by the Federal Communications Commission on May 7, 1993, and was published in the *Federal Register* on August 25, 1993. This final rule contained changes to 47 CFR 87.187 that were inaccurate on August 25, 1993, due to other changes made to that section on May 26, 1993 (58 FR 30127).

Need for Correction

As published, the final rule contains errors that are misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on August 25, 1993, of the final rule (FCC 93-184), is corrected as follows:

§ 87.187 [Corrected]

Paragraph 1. On page 44954, in the second column, in amendatory instruction 2., in the 1st line, "(2) and (aa)" are corrected to read "(bb) and (cc)".

Para. 2. On page 44954, in the second column, in 47 CFR 87.187, the

paragraph designation "(z)" is corrected to read "(bb)".

Para. 3. On page 44954 in the second column, in 47 CFR 87.187, the paragraph designation "(aa)" is corrected to read "(cc)".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-24337 Filed 10-5-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80-9; Notice 8]

RIN 2127-AE86

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This notice responds to petitions for reconsideration of the final rule published on December 10, 1992, establishing a visibility enhancement scheme for large trailers, and amends Standard No. 108 pursuant to these petitions and to Supplemental Notices of Proposed Rulemaking (SNPRMs) that were published on January 22, and April 22, 1993. In response to the petitions for reconsideration, Standard No. 108 is amended to change the mounting height of conspicuity material from 1.25 m to the 375 mm—1525 mm range originally proposed, to reduce the width of the stripe required on rear underride guards from 50 mm to 38 mm, and to clarify requirements relating to horizontal location and to platform trailers with bulkheads and those without underride guards. All other petitions are denied. In response to the SNPRMs the final rule provides that trailers which are equipped with a conspicuity treatment conforming to S5.7, need not be equipped with the reflex reflectors required by Table 1. Also, the rule modifies Figure 29's requirements for specific intensity per unit area values for retroreflective sheeting, and those of S5.7.2.1 for reflex reflectors. These amendments relieve a regulatory burden on manufacturers of these trailers.

DATES: The final rule is effective November 5, 1993.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking (202-366-6346).

SUPPLEMENTARY INFORMATION:

Background of This Notice

On December 10, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standards No. 108 *Lamps, Reflective Devices and Associated Equipment* to add paragraph S5.7 *Conspicuity Systems*. The rule (Notice 6, 57 FR 58406) implemented a notice of proposed rulemaking (NPRM) published on December 4, 1991 (Notice 4, 56 FR 63474). Under the rule, trailers manufactured on or after December 1, 1993, which have an overall width of 80 inches or more and a GVWR of more than 10,000 pounds (except trailers manufactured exclusively for use as offices or dwellings), must be equipped with a conspicuity treatment of either retroreflective sheeting or reflex reflectors.

The comments responding to the NPRM suggested two modifications that appeared merited, but could not be adopted in the final rule because they were beyond the scope of the proposal. On January 22, 1993, NHTSA published a supplemental notice of proposed rulemaking (SNPRM) proposing a modification of the final rule to implement those comments (Notice 7, 58 FR 5699). The SNPRM was republished with a minor modification on April 22, 1993 (Notice 7A, 58 FR 21553).

A discussion of the notices follows.

Petitions for Reconsideration of the December 1992 Rule

Petitions for reconsideration were received from the American Trucking Associations (ATA), the Truck Trailer Manufacturers Association (TTMA), the Insurance Institute for Highway Safety (IIHS), Advocates for Highway and Auto Safety (Advocates), and S.A. Heenan. In response to issues raised by the petitioners, further comments to the docket were submitted by Paul Olsen, CTI, the National Association of Trailer Manufacturers (NATM), Hackney and Sons, and United Van Lines. Comments relating to issues in the final rule were also received from Mirage Carriage Works, Sundowner Trailers and Wells Cargo.

There were eight principal issues raised by the petitions for reconsideration, which are discussed below.